A PERFECT ABRIDGMENT OF THE Eleaven BOOKES OF REPORTS, OF THE Reverend, and Learned K^t. S^r. EDVV. COOK, Sometimes Chiefe Justice of the upper Bench.

Originally Written in *French*, by S^r. JOHN DAVIS, sometimes Atturney-Generall in *Ireland*. *Done into English.*

Whereunto is annexed two perfect Tables.

Plutarch. In Themistocl.

Les loix & coustumes sont diferentes, & estiment les uns une chose honeste, & les autres une autre, mais bien est-il honeste a tous de garder & observer celles de son pais.

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UMI

To the Reader.

THe Diſcourſe to follow is Law, an Abridgement of thoſe famous Reports, ſo much in every mans hands; it would be no ſmall folly to Court Opinion by the allurement and trappings of words; to thoſe that are knowing, really, if they be told this was done by Sir *John Davyes*, that it is the Child of his Pen and Study, it will be enough; his learning was generall, not inincloſed in the Law *French*, but ſuch as (though it be a miracle next the Harpe of *Orpheus*) has ſmoothed and ſoftened the harſhneſſe of his ſubject. In a word, he deſerved his Honour, and will be read while the annals of the Laws are of reputation; of which Laws

it were to purpoſe to ſpeak ſomething, all judgemens not being ſatisfyed with the juſtneſſe of them, but the complaints are not complaints of yeſterday, the Ages backward are full of the ſame raſh lightneſſe of the ſame malevolence; nor can it be otherwiſe, the unhappineſſe of man being ſuch, to love and hate by Paſſions, to love the cauſes of our benefits as they are ſuch cauſes onely; all loſers, (and they have the authority of a Proverb for it) will ſpeak: what man ſubmits peaceably to his Court or judgement? what client imputes the calamity of his tryall to his own bad title, to the injuſtice of himſelfe and his caſe? The Courts and Judges are by theſe ill adviſed heads bequarrelled as injuſt, becauſe they will not do unjuſtice; The Law, like the happineſſe of *Titus*, muſt pleaſe all mankinde, or worſe blind, and leſſe conſiderate then the

the Fable of Fortune, favour onely wrong and trouble, else it, not our selves, is guilty of transgression; All Laws if these become crimes allowed, are criminall, and the more excellent, and exactly just they be, must be the more incommodious, the more mischievous; There used to be but one question concerning Laws, it was this, Whether they were profitable: not to the greater or more contentious, but to the better part: as it is said of the publick powers, may be affirmed of the Laws, were it not for these we should devour one another: These distinguish Property and Rights, Men and Things, these advance and secure the industrious from the rapines of desperate lawless violence, without these our lives would be but one continued Act of hostility, which our continued doubts and fears would make uncomfortable to us. Another professed enemy the

Law

Law has, made up of pride and ignorance, not worth ſatisfaction were he capable of it; It is uncivill according to that, *niſi tota lege perſpecta*, the whole Law not being opened to give ſentence, &c. How uncivill is it then that they ſhould ſentence the whole Law who never underſtood the leaſt part of it? Theſe Laws are moſt excellent, ſayes the Lord *Cook*, refined and perfected by all the wiſeſt men in former ages, they are approved by continuall experience to be good for the Common-wealth, and cannot without great hazard be altered: and in another place of all Laws humane, theſe are moſt equall, moſt certain, of greateſt Antiquity, moſt beneficiall and eaſy to be obſerved. Againe, as *Ingulphus* then Abbot of *Crowland*, The Conqueror changed them not, I carryed home with me, as he, the Laws of the moſt juſt King *Edward*, made

authentick

authentick, perpetuall, and inviolably to be obſerved by Proclamation of King *William*, commended to his Juſtices in the tongue they were ſet forth; If diverted from their courſe as the ſame L. *Cooke* they were ſuddenly reſtored, King *Knute* for the equity of them, commanded them to be uſed in *Denmarke*, by this Law as the *Parliament* 1. *Jac.* The peoples ſecurity of lands, livings and priviledges are preſerved, and by the aboliſhing or alteration of which preſent confuſion will fall upon the whole State, and frame of this Commonweale; As our knowing Author, ſhould the Laws ceaſe, but 27 houres the Kingdome were ruined, untill the faults imagined in the Law can be ſhown (which is not like tobe in haſte) nothing is ſo lawleſſe and injuſt, as to referre the Law to the tryall and examination of ſuch men, whoſe judgements is the verything to be tryed and examined.. *The end.*

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Tenant for life, remainder for life wasts, i remainder for life surrenders, or dyes the remainder in fe may bring wast, no before. To be inserte betwixt the Earle o P. his case, and Booth's case, r. 5. p. 122.

The end.

LIB. I.

Lord *Buckhurſts* Caſe, *f.* 1.

Reſol. 1.

Man warrants Land for himſelf and his heires, to another and his heires, this is a generall warranty.

2. Feoffe with warranty enfeoffes another without warranty, the Feoffe ſhall have the evidences without any gift of them.

3. Tenant with warranty enfeoffes with warranty, ſuch Charters as comprehend the warranty, or are materiall to darraine the warranty paramount, or to defend the Title of the Land, paſſe not without a gift of them, but Deeds which concerne the poſſeſſion paſſe.

4. If A enfeoffe B with warranty to him, his heires and aſſignes, B enfeoffe C. with warranty, though C. may vouch A as aſſigne, B. ſhall have the firſt Deed.

5. The grantee of a rent, or ſuch thing as lies in grant with warranty, grants over with warranty, the ſecond grantee ſhall have all the evidences, becauſe without them hee cannot make his Title.

6. The ſon of the Feoffor who is bound by warranty, ſhall keepe the evidences which the Father might have kept, though hee have not aſſets, for the poſſibility that aſſets may diſcend, when the warranty is taken away, as in Eſchetes of Lands, the feoffee ſhall have the Charters: generally he that has right to the Land ſhall have the Charters, ſo that no man elſe be prejudiced, or he has them by gift.

Sir *W. Pelhams* Caſe, *f.* 14.

Leſſee for life, remainder in taile, remainder in fee, the leſſee for life bargaines and ſells in fee to A. who before the Statute 14 of *Elizabeth*, ſuffers a common recovery, in which the leſſee for life is vouched; The entry of him in remainder is lawfull within the Stat. 32. *H.* 8. 31. *opinio curiæ.*

Porters Caſe, *f.* 22.

G. ſeiſed in free burgage, 24. *Sept.* 23. H. 8. deviſes to A. his Wife in fee, upon condition, in all convenient ſpeede by the advice of learned councell, to convey thoſe Lands to diverſe in truſt, for the maintenance of a free Schoole, Bedel-men and Bedel-women for ever. Hee makes A. his executrix, and dies, the 6 of *Octob.* 32. *H.* 8. A enters, and the 13 of *April* 3. *E.* 6. Leaſes for 40 yeares, which terme was conveied to the defendant, the heire of G bargaines and ſells to the Queen, the defendant enters, the Atturny generall informes.

Obj. 1.

Obj. 1. Objected. The estate of *A* is absolute, and the condicion against Law, for good as well as bad uses are taken away by the Stat. 3. 23. *H.* 8. and in good uses too the same mischieses are met with, as losse of wardship and other fruits of seigniories. 2. The statute is generall, all other like uses. 3. To maintaine Bedes-men and Bedes-women were then good uses, and those are taken away by the same Statute. 4. The Statute provides that it shall be construed in destruction of such good uses. 5. Certaine good uses are excepted.

Anſ. To the first, it was answered for the Queene, that before this time the errors of the Church were discovered, and the intent of this Statute was to take away superstitious uses, not good uses, and the Statute makes not the conveiance but the use void, & gives not to the Lord Title to enter as in cases of mortmaine; without consideration, it were to the use of the Feoffor, and with consideration to the use of the Feoffee; Thus they may maintaine the good uses, and it is apparant the Statute of 23 is of small force. 2. Admit good uses within the Statute, yet the condition must be good; because the conveiance is to be made by advice of learned councell, by which the condition might have been performed, first by procuring that the Feoffees might become a Corporation, next by alienation to them with licence; 3. Then the statutes of Wills must certainely repeale this statute; since these give power to any man to devise as he pleases, and were ever favourably construed in maintenance of good uses.

Anſ. To the second, the condition too is twice broken, first by the long continuing the possession without conveying, next by the lease

for 40 yeares which diſables to conveie.

Reſol. 1. Reſolved, the ſtatute 23 extends not to good uſes.

2. Secondly, that the condition is broken upon thoſe reaſons, but whether the ſtatutes of Wills have weakened, or taken away the ſtatute of 23. was not reſolved.

Alton woods Caſe, *f.* 40.

The Counteſſe of W ſeiſed of A parcell of which is *Alton Woods*, levies a fine the 3 of H 7. to H 7. in Taile, the reverſion diſcends to E Earle of W, who 19 H 7. is attainted by *Parliament*, and to forfeit whatſoever was his, the ſecond of *Aug.* 14. H 7. H 7. dies, the Taile and Reverſion diſcends to H 8. All this is found by office, *virtute officii*, returned into the Chancery; H 8. 23 H 8. grants D to W for life, and 28 H 8. G. to the ſame W and his Wife, after in conſideration of ſervice and ſurrender of thoſe Letters Pat. *Ex mero motu*, he grants G and A to them and the heirs of the body of W. in the defendants plea, the ſervices and ſurrenders are averred, by ſtatute of H 8. G and A are given to the King, ſaving the right of all but the counteſſe of W and her heires. *Alton Woods* was conveyed by W to L. the defendant juſtifies as his ſervant.

Excep. 1. By the Attur. Gen. It is pleaded the H 7. was ſeiſed of the reverſion, but it is not ſhown that the Office was found in the time of H 7. nor that the Earl of W was dead; anſwered. The pleading was good in ſubſtance though not in forme, becauſe the grant of H. 8. was after Office.

2. This Office being by vertue of Office, no of Writ is returnable into the Exchequer; *Anſwe*

we

well returned upon view of presidents, 2. The office intitles the King without returne.

3. The office intitles H 7. by attainder, and H 8. by discent which cannot be; For H the 7. was never seised. *Answ.* The finding the attainder was onely materiall, the rest surplusage.

4. No averment that D and G were demised by the King, and if not the King is deceived in his grant. *Answ.* The service and surrender make the consideration, the leases are no part of it, and the averment of the first is enough; Nor as it is said can any recitall bind the King, rather shall he be thought to be deceived.

5. The King is deceived in the consideration; The estate of the wife is not surrendred by surrender of the Letters Pat. *Answ.* it appeares not within the Letters Pat. that the King could have more surrendred then the Letters Pat.

The points in Law are:
1. Whether the Letters Pat. of G. and A. are void.
2. Admitting no; whether the stat. 28. H 8. gives the whole to the King.

1. *Point.* To the first, the case is thus, the King Tenant in Taile, the reversion to himselfe, his heires and successors, grants in Taile, it is void; 1. Because he takes upon him to grant more then he can, his grant cannot be effective according to his intent, 2. The Kings Pattent can do no wrong, so not make a discontinuance; Discontinuance is either by livery or warranty, neither of which reach to discontinuance in the Kings Case. It was objected the grant shall enure as it may, and that by it an estate of life and the reversion in fee shall passe,

more strongly too, because the words are, *of our meere motion*, and where those words are used, the Kings grants are construed like those of common persons; Also the King needs not recite his owne estate, which yet if he does his grant shall take effect as before. *Aus.* The Kings meaning being to passe an intire estate, nothing shall passe by such fractions, so should the Kings estate Tail be in abeyance which is impossible, for let the King Tenant in Taile grant all his estate, he grants nothing. As to the rule urged from those words of *meere motion*, it must first be known, whether the King be not deceived as here; For these words are not of force to prevaile against the Kings intent expressed in his grant.

2. *Point.* Allowing the grant good, the whole is given to the King, by the statute 28 H 8 as to this the case is thus, I.S. Tenant in Taile of D the reversion to the King, D is given to the King by *Parliament*, with a saving the right of all others, The right of *I. S.* is not saved. 1. Because the saving, should it aid the Tenant of the Land, were repugnant, and the statute vaine: 2. *I.S.* is the giver, and it were an unreasonable saving which is to save the right of the giver.

Capels Case, *f.* 61.

Tenant in Taile, E remainder Taile grants a rent charge, Tenant in Taile suffers a common recovery and dies without issue.

Resol. 1, Neither the recoverors, or any in under them, are subject to the charge of him in remainder; 1. Because they are in by the Tenant in possession, who is not subject to such charge, for Land cannot be liable to the charge of

of two, to be effectuall the same time; he in possession charges and he in remainder, after which he in possession suffers a recovery, the charge alone of the Tenant in possession binds; 2. The charge of him in remainder is good by possibility, if ever the remainder be executed, the grantee shall distraine for all his arreres; for although the remainder be not manurable, there is a tacite condition annexed to the grant, to take effect when it shall come into possession, which condition the recovery has destroyed. 3. The grantee cannot falsifie the recovery, it being suffered by one not at all chargable with the Rent.

2. Common recovery defeates in the same manner the charge of him in reversion.

Archers Case, *f.66.*

A. Tenant for life remainder to his next heire male, has issue a son and enfeoffes *I.S.* with warranty.

Ref. 1. A. has but an estate for life, the remainder was limited to his heire in the singular number, but the son cannot enter as heire for the forfeiture in the life of A.

2. The remainder to the right heire of A, is good, although there cannot be an heire of A in his life time, it is enough if he have at the time of his death.

3. By the feoffment the remainder is destroyed, for the feoffment determines the particular estates, in the instant of the determination of which the remainder must begin or never; otherwise were it, had A been disseised, there the right remaines and the possession may revest, Note. The particular estate has continuance as to all those, who claime by A, and above

the feoffment, and to no other.

The remainder is barred by the warranty, although the warranty had its creation before the remainder vested, because the remainder began by force of the devise before it, and also although the issue could not avoid it.

Bredons Case, *f.76.*

Tenant for life, remainder in Taile, remainder in Taile, Tenant for life and the first remainder levy a fine to one that grants a rent charge to the Tenant for life, the first remainder dies without issue; The second remainder enters, Tenant for life distreines.

Resolved, It is neither discontinuance nor forfeiture; no discontinuance, each gives but his owne estate; no forfeiture, it shall be first construed to be the fine of him in remainder, afterwards of the Tenant for life.

Corbets Case, *f.83.*

C. covenants to stand seised to his own use for life, the remainder to R in Taile, remainder to A. in Taile, &c. on condition, that if any of these shall resolve to bar the said estate, his estate shall cease as if he were naturally dead, and be to the next remainder. C dies, R suffers a common recovery, A enters, R reenters, A brings an action of trespasse.

Resol. The Proviso to cease the estate, &c. is repugnant and against Law; for an estate in Taile shall not cease before the death of the Tenant in Taile without issue; not by his death alone, death naturall or civill is requisite to every discent, reversion, or remainder upon the determination of an estate Taile.

Obj. And to the Objection against the repugnancy,

pugnancy, That there is no repugnancy at all in the bare case, because R. the recoveror has no issue, it was answered, yet has he an estate of inheritance descendible, to which no such condition can be annexed. 2. By a condition, not a parcell but the entire estate is to be defeated. 3. The donor cannot continue an estate as to one, and determine it as to another. 4. It would be dangerous to the *Præcipe* of a stranger, were such vesting and devesting of estates suffered; and although a parliament may make such disposition of estates, private men cannot.

Shelly's case. 93.

E.S. having issue H. and R. leases for yeares, H. dyes leaving issue a daughter, his wife *privement enseint* with a son H. E.S. suffers a common recovery to his own use for life, the remainder to the use of C. for 24. years, the remaind. to the heirs males of the body of E.S. in taile, he dyes the same morning the recovery passed, before the Court sate; the *Habere facias seisinam* is awarded, the recovery is executed, H. is born, R. leases to W. H. enters, W. brings an *Ejectione firmæ*.

The Points. 1. Tenant suffers a recovery and dyes, whether execution may be sued against the Issue.

2. Tenant in Taile lessor for yeares suffers a recovery, whether the reversion be in the recoveree without execution.

3. Tenant in tayle hath issue two sons, the eldest has issue a daughter and dyes, his wife *privement enseint*, tenant in taile suffers a recovery to his own use for life, the remainder to another for yeers, the remainder to the heires males of the tenant in taile, and dyes the same morning before execution, the recovery is executed, R.

his second son enters, whether the entry of the son of the eldest son born after be lawfull.

4. Whether R. the second son can take by purchase, as heir male of the Recoverer, the daughter of the eldest son being alive, and heire generall.

1. For the Plaintiffe, it was argued as to the first, that execution may be sued against the issue in taile, because the taile is barred by judgment to recover in value, and not by the execution which follows.

2. The reversion is not in the recoverors without claim, for the judgment is that the demandant shall recover seisin of the land, which cannot be without execution, entry, or claim.

3. The entry of H. is not lawfull, R. is in by purchase, for the use vested in him was never in the father, but began and was originally in R. never in the father, for the uses ought to rise out of the estate of the recoverors, and the father was dead before the recovery was executed. 2. The words are, *To the heires males of the body of E.S. and to the heires males of the body of the said heires males:* So are the first words, words of purchase, not of limitation; the last words are words of limitation, and cannot be knit to words of limitation, such construction being to be made, that all words may be retained, without refusing any.

4. R. must take by purchase as heir male of the body of E.S. because he shall take by discent, &c.

For the defendant it was argued, 1. The judgment barres not the taile, but the recompence, which the issue in taile cannot have, because execution cannot be sued against him, he being in above the recovery.

2. The reversion is in the recoverors without any

any act done, 1. Because they can sue no execution during the term. 2. Otherwise the waste by the lessee were dispunishable. 3. Things in grant are in the recoverors by the judgment.

3. The entry of H. is lawfull, 1. Had execution been sued in the life of E. then were R. in by discent, and H. might enter; and the execution by the act of God becomming impossible, no man is to be prejudiced by it. 2. Admitting (as this case is) that R. comes not in directly by discent, yet comes he in in course and nature of discent, begun upon the act in the life of his Ancestor; for where the heire takes any thing which might have vested in the father, he shall take in nature of discent. 3. Although the execution was made after the death of E.S. it was in consummation of the recovery had in the life of the father, and in law they are one act. 4. R. has the uses as they are limited to him by the Indenture, which is by words of limitation as heir. 5. H. and not R. in this case should have the *subpœna* before the statute, because it appears to be the intent of the recoveree, that his next heire shall take; and often times uses are transferred from him in whom they vested, to others, according to the intent of him that raised them: and by the same reason that H. should have had the *subpœna* before the statute, shall he have the uses themselves afterwards. 6. If the suing or not of the execution, betwixt the death of the Grandfather and the birth of the Nephew, may make the Unkle or Nephew inheritable, it shall now be in the power of the recoverors and the Sheriffe, to make which they list heire, which power shall never be given to strangers and instruments.

4. R. cannot take by purchase, living the daughter

daughter of the elder brother, although he might take by discent by form of the gift, 1. Because he cannot be heire male while he is not yet heire. 2. Because there can be no more then one heire to take by purchase: And to what is objected, that the words *his heires males* are words of purchase, or the words subsequent are to no purpose; it is answered, that when the ancestor takes an estate of franktenement by conveyance, in which an estate is limited mediately or immediately to his heirs, the words *his heires* are words of limitation: Contrary when an estate for yeers is limited. 2. And granting these to be words of purchase, then must all the other heires of the body of E.S. be shut out, against his own intent; but because these are words of limitation, R. shal not take by purchase.

Resol. 1. Execution may be sued against the issue in taile in favour of the common recovery, and because the taile is barred by the judgment.

2. The reversion is not in the recoverors by the judgment.

3. R. is in nature of discent.

4. The death of the recoveree doth not hurt the recovery.

Albany's case. 110.

A. enfeoffes to the use of himself for life, the remainder to D. in taile, with power of revocation, after the death of P. without issue, A. enfeoffes B. of part, D. enters for the forfeiture, A. releases his power of revocation, P. dyes without issue, A. revokes the uses.

Objected, This release destroyes not the power of revocation, for a fine or feoffment extinguishes not a power or authority which is collaterall to the right of the land; they passe onely

onely those rights which a man has as owner of the land: this power is but a possibility untill the death of P. so the case more strong.

Resol. The power of revocation is extinguished by the feoffment, rights, uses future and present passe; and although this power is not any right to the land, yet it is a mean by which the right of the land is altered.

This release extends to the power of revocation, however if it were present, as well as in the cases of condition subsequent, warranty, and covenant: But there was no resolution given, it was adjudged a defeasance destroyes it.

Chudleighs case. 120.

The principall point of the case is this. Sir R. C. having issue C. T. O. and N. makes a feoffment to the use of his feoffees for the life of C. the remainder to the first issue male of C. in taile, and so to the tenth, the remainder to T. in tail, &c. and dyes, the feoffees enfeoffe C. having notice of the former uses; the contingent uses are destroyed.

1. Concerning uses foure things are considerable. 1. First, what use is, it is not a right in or to a thing, but a bare confidence in the feoffee that *cesty que use* shall take the profits; Feare and fraud have contributed to its production; Uses are divided into those *in esse*, in being, whether in possession, reversion, and remainder, or in contingencie: confidence in the person and privity in the estate are the incidents, those either expressed by the party or implyed by the law; to some respects it is a chattell, for it is devisable; to some inheritance, of which there may be *possessio fratris*; but in law neither one nor the other, being not allowed to be assets.

2. Whether

2. Whether contingent uſes might be diſcontinued or deſtroyed at the Common Law: thoſe in being might, then more forcibly thoſe of contingency, things annexed to the land, as common, &c. alter not with the alteration of the land; otherwiſe of things annexed to the eſtate, as uſes, warranty, &c. 2. Uſe is but confidence, if the privity therefore in eſtate be taken away, as in the caſe of diſſeiſors, &c. who are in in the Poſt, or the confidence in the perſon as in a feoffment to one that has no notice of the uſe, it is deſtroyed.

3. Whether had this uſe been deſtroyed before the 27. H. 8. the feoffees having notice of the uſe. Here two things are to be looked upon, 1. The miſchief before this ſtatute. 2. Next, the remedy. The miſchief appeares by the 1. R 2. c. 9. which becauſe diſſeiſors make feoffments to great men, and perſons unknown, gives the action againſt the Pernor or taker of the profits: the 4. of H. 4. 7. enlarges this ſtatute, the 11. of H. 6. 4 explaines that, the 1. of H 7. c. 1. appoints a Formedon againſt the Pernor, the 4. of H. 7. 17. provides for the fruits of Seigniories, as Wardſhips, &c. where there is a *cesty que uſe*: the 1. of R. 3. more generall then all of them, remedies four miſchiefs, 1. Unſurety to the purchaſors. 2. Trouble. 3. Coſts. 4. Grievous vexations. In vain was all this ſubtlety, the feoffor limits an eſtate to himſelf for life in taile to his wife or ſon, the feoffee deceives with his darke leaſes: the unſurety, trouble, &c. are the ſame ſtill: the 27. of H. 8. transferres uſes into poſſeſſion; ſo now it would be againſt Law, and that Act, to preſerve any uſe which might have been deſtroyed before it, the purpoſe of which was to extirpate uſes; for ſo more grievous vexations

tions then the former may ſpring up again.

2. The remedy that was applyed to this ſore, was the execution of uſes in poſſeſſion; thoſe are uſes *in eſſe*, not contingencie: For foure things are neceſſary to the execution of an uſe, 1. the perſon ſeized. 2. *Ceſty que uſe en eſſe.* 3. *Uſe en eſſe.* 4. The uſe ought to be veſted in the *ceſty que uſe*: If therefore A. have right to an uſe that is not executed untill the regreſſe of the feoffees, ſo do contingent uſes and rights remain at the common Law.

And to what was ſaid, That the land ſhall be bound with the contingent uſe, in what hand ſoever it come, theſe abſurdities ſhew with what lightneſſe it is ſaid: 1. The uſe is then annexed to the land, not to the eſtate, and it muſt follow, the King and other Corporations muſt be ſeiſed to uſes. 2. Uſe is but confidence, and that is to be repoſed in the land, which wants ſenſe. 3. Be it that it be annexed to the land, as rent or common, no man can ſtand ſeiſed to uſes who is a ſtranger to the deed. 4. If the nature of uſe be changed, and a new inheritance diſcovered hidden in this ſtatute, then if any man ſhall make a feoffment on the part of his mother, without conſideration, the heire of the fathers ſide ſhall have it, which is not Law. 5. If A. be tenant for life, the remainder over to B. B. covenants that if A. dyes without iſſue within foure yeeres, he will become ſeiſed to the uſe of C. A. enfeoffes D. who covenants to ſtand ſeiſed to the uſe of E. A. dyes without iſſue within foure yeers, ſuppoſing the contingent uſe executed, there are then two uſes at once, but the uſe of E. is onely executed, not that of C. till B. enters; for though an uſe ſeems like a charge upon the land, yet it cannot begin untill the eſtate

eſtate out of which it iſſues be recontinued.

It may be asked, when the regreſſe of the feoffees ſhall be requiſite to revive the uſes: Some think it muſt be in diſſeiſins onely, or where the eſtate of the land is diſturbed by alienation to one that knowes not of the uſe: Others, that they may enter in all caſes where they may regain their old fee, not otherwiſe, for avoiding fractions of eſtates. This is anſwered, that there is no inconveniency in the fraction, it is made by Act of Parliament; and on the contrary this miſchief would inſue: A. has a uſe to himſelf for life, contingent uſes to his ſons, and over in remainder, is diſſeiſed, and dyes; the contingent uſes are deſtroyed, for the feoffees cannot have their ancient fee, becauſe the remainder is executed.

The objection, that in as much as uſes *in eſſe* are executed, and the *ceſty que uſe* in the * *poſt*, the contingent uſe cannot riſe at all, is anſwered with this caſe: A. has a uſe to himſelf for life, the remainder to his firſt ſon in taile, remainder to B. in taile, remainder to C. in fee; now is A. tenant for life, the immediate remainder to B. nothing in the feoffees but a ſpark of right, to ſerve the ſon when he ſhall be born, then is his eſtate middle, between that for life and the remainder in taile; but if a diſſeiſin precede the birth of the ſon, A. muſt enter, or the feoffees after his death, to execute his remainder; but if A. make a feoffment, the remainder limited to the ſon is gone.

* *And not in the privity of eſtate, out of which the future uſe ſhould riſe.*

The ſtat. executes the poſſeſſion, the poſſibility becomes an eſtate in Law.

It

It is objected too, Uses in contingencie are in the custody of the law, and so safe; but this were idle, that the common law could pluck up those uses, and as much cannot be done now; nay it were most absurd, that a statute should preserve that which it self termes fraudulent; when too all statutes, whose scope it is to restrain uses, are ever expounded in subversion of uses: So was it concluded at the Barre, that by the feoffment to C. the contingent uses were destroyed, *Walmsley* and the *Ch. Baron*, before the statute 1. R. 3. the feoffees had the whole estate, and the disposition of it, after the *cesty que use*, and the feoffees, and so not seldome did they defraud one another by secret conveyances, untill the statute 27. which was framed in advancement of uses: This statute has established the estate of *cesty que use* against the feoffees, so that it must thwart the meaning of that law, to talk of any *scintilla* or spark of right which should be imagined in the feoffees, in whom the statute has left nothing: The words are, *Where any person or persons stand seised, or at any time hereafter shall happen to be seised*; by which it is plain, that the seisin of the feoffees at the beginning (which is notioned by seisin at some time) without any regresse may serve for all uses, either in *esse* or contingency for ever; and although originally a Corporation cannot be said to be seised to uses, yet had such a body been enfeoffed, it must now become seised to such contingent uses as may after happen. And as where there is *cesty que use* of land, and *cesty que use* of rent issuing out of that land, and the possession of the land is divested, this reaches not to the rent, because the disturbance was done to another seisin: so here the disturbance is to the possession executed by the statute,

ſtatute, not at all to that of the feoffees: Both of them agreed in this diverſity, that were the feoffees diſſeiſed before the ſtatute, their regreſſe was fit, becauſe they were not ſeiſed at any time after the ſtatute, otherwiſe were the diſſeiſin after the ſtatute. Alſo the ſtatute has, *To the uſe of any perſon or perſons*, not perſons *in eſſe*, wherefore when they come into being their uſe ſhall be executed, and in the mean time being in the cuſtody of the law, that preſerves it.

Reſol. 1. The reſt of the Juſtices contrarily agree, that notwithſtanding any notice of C. the feoffment has deſtroyed the future uſe, for by it all the uſes are deveſted, this feoffment had bin a forfeiture to the contingent uſe, had that bin in being, (the next remainder is not to enter for it;) and is as miſchievous as the death of the feoffees before the contingent uſe happens. To what was ſpoke of the cuſtody of the Law, and it's protection, it is not conſented to; eſtates taile in abeyance may be barred by common recoveries; alſo a feoffment before the 27. H. 8. had overthrown a contingent uſe; with as good reaſon then may it deſtroy ſuch uſe now, as not being within that ſtatute. The eſtate of the feoffees which is to ſerve the contingent uſe, cannot be in abeyance, neither can all the eſtate veſt in the uſes in *eſſe*, for ſo the future uſe could never riſe, it being impoſſible to raiſe uſes out of the poſſeſſion of *ceſty que uſe*; all the uſes in being ſhall be veſted, the feoffees have ſince the ſtatute poſſibility to ſerve the future uſe when it comes in being, and ſufficient eſtate, if no diſturbance intervene, as here.

2. Tenant for life, remainder in tail, remainder in fee, enfeoffs the rem. in fee, it is a forfeiture.

3. A

3. A collaterall warranty discends upon an infant, shall not barre him, if there be no discent after his full age.

4. Grants of Copy-holds forfeited bind not the disseisee, admission by the disseisor do.

5. An estate to one and his heires during the life of A. is but an estate for life, upon which a remainder depends.

6. An estate to A. and his heires of the body of I.S. is an estate taile.

Anne Mayo's case. 147.

T.M. enfeoffes D.M. in fee upon condition, T. and D. joyne in the grant of a rent charge to A. the condition is broke, T. enters, he is chargable.

Object. This enures as the grant of D. and a confirmation cannot alter the quality of an estate.

Resp. T. is chargeable, where the estate is upon expresse condition the confirmation makes not absolute; but if the deed be without condition, as here the grant of the rent is, the confirmation takes away the condition annexed by law. 2. Every fee may be charged one way or other, in this case if it cannot be done by their joint grant, there is no way.

Rector of Ched. case. 153.

R. demises to E.E. for 80. years, if she live so long, and if she dyes within the term, the remainder to F. if he dye or alien within the term the remainder of the said term to G. and if he dyes or aliens within the term, the remainder of the years to H. H. and G. dye, E.E. dyes, F. enters and dyes, the Executor of H. enters, &c.

Resol. 1. By the death of E. the term is ended, and

and then the limitation of the residue of the years of the said term void.

2. Although the limitation to H. was of the residue of the years, it is void, 1. The lessor has no power to contract for the term after the first lease to E. he has but a possibility which is not demisable: but this was not resolved.

3. It is void, because it is uncertain how many years will remain after the death of E.

4. And although the incertainty is reducible to a certainty, yet H. dying before E. it cannot be reduced, and so is void.

5. The Estate of H. depends upon two contingencies, that F. and G. shall dye in the life of E. but F. survives E. therefore H. to have nothing.

6. It is void because it depends upon a contingency which depends upon a contingency.

Digges case. 173.

C.D. seised in fee of the lands in question, and others, in consideration of marriage of T. his son, and for 200 li. and other good considerations, covenants to stand seised to the use of himself for life, remainder to T. in taile, &c. with power to revoke and limit new uses, by deed indented and inrolled in any Courts of the King. *6. Maii 12. Eliz.* by deed indented and inrolled in the Chancery, C. revokes, &c. in part of the land, and by the same deed limits the use to himself: After by another deed dated *2. Sept. 13. Eliz.* inrolled in the common Bench he revokes the use of the residue from the inrolment of this in the Chancery, and limits it to himself in fee, after which he leavies a fine of part, to the use of himself and his wife, for her jointure, the residue to his own use in fee; after that

of

of the second of *September*, is inrolled in the Chancery, he enters and claimes; the question is whether he died seised in Fee.

Resol. 1. C. may revoke part at one time, part at another, not twice one part.

2. The revocation was to be made by Deed indented to be inrolled, which is to be understood and inrolled; The revocation is not complete till inrolement.

3. The Indenture of the second of *September* declares, that from the time of the Inrolement of this Deed in the Chancery, the uses in the first Indenture shall be void, so it is no revocation till Inrolement there.

4. The fine before the Inrolement in the Chancery has extinguished the power of revocation, because the Land moves from himselfe; a stranger that has such a power cannot extinguish it by any act.

5. Had not there been a fine the reversion had beene in him and without entre or claime, because hee was Tenant of the franke Tenement.

6. The ancient use may be revoked, and new limited in the same Deed by construction of priority in operation of the Deed.

Mildmaies Case, 175.

S. having a Wife A, and Daughters G, V. and O, in consideration of a jointure for his Wife, advancement of his issue, if he shall have any, and continuance of his Land in his name, and for other good considerations, covenants, to stand seised of 600 acres of Land to his own use for life, the remainder of 300 acres for the joynture of his Wife, the remainder of the whole to his issue male in Taile, the remainder to his three

three Daughters, reserving power to make leases V. dies, S. leases a great part for 1000 yeare to O.

Resol. 1. An use cannot be raised upon a generall consideration: the Court ought to judge the sufficiency of a consideration; yet if the consideration be generall, a speciall consideration may be averred.

2. When an use is raised in consideration of fatherly love, &c. with a proviso to make Leases, the proviso is void and repugnant; the consideration and the intent being generall alike; otherwise where uses are raised upon a Fine, recovery, or feoffment, there considerations are not needed: where the covenant is generall and the persons certaine, averment may be taken, not if the person be incertaine.

3. Other considerations shall be construed, other in nature and quality from those named before, Therefore the advancement of O. being part of the consideration of the former Indenture, this lease being made upon the same consideration is void.

4. The leases were to be made upon reasonable considerations, but it were unreasonable to disinherit the other Daughter.

5. An ignorant man takes upon him to know the Law, and affirmes the lease to be good: An action of the Case lies.

LIE.

Lib. II.

Manſers Caſe, *f.* 3.

Debt by P. againſt M. the Defendant pledes the Bond was upon condition, that P. ſhall injoy the Land, which he holds by feoffment of M, diſcharged and indemnified, and that M, and his ſon ſhould performe ſuch acts for farther aſſurance, as by P. ſhall be deviſed; he pleades he has kept P. diſcharged, and indemnified, and ſealed a releaſe deviſed by P. to be ſealed by himſelfe and his ſon, but the ſon being illiterate deſired the Deed might be delivered him, to be informed, whether it was according to the condition: P. refuſes, and the ſon will not ſeal, adjudged no plea.

Reſol. 1. He that is unlearned needs not deliver a Deed not read to him in ſuch language as he may underſtand it, if he require ſo much; here his Bond makes his ſealing peremptory to himſelfe, more ſtrangly is this Caſe, where the obligor undertakes his ſon a ſtranger to the condition ſhall ſeale.

2. The Plea ſhould ſhow how the defendant had kept the plantife indemnified, otherwiſe, had hee pleaded in the negative, not damnified.

3. The defendant muſt ſhow that the leaſe concerned that Land.

Goddards

Goddards Case, *f.* 4.

An Obligation delivered the 3 d. of *Feb.* 23 of *Elizabeth*, is dated the 4 of *April* 24 *Eliz.* the obligee dies before the date, his Executors bring an action of debt; upon Plea of Not his Deed, adjudged for the plaintife.

Res. Although the parties are estopped to plead the delivery of the Deed before the date. The Jurors who are sworn to speake the truth are not stopped, yet is the Jury estopped to find things admitted by both parts in the Record, for they cannot find any thing in which the parties do not differ.

2. The date of the obligation is not material all, for the Deed being writ and sealed takes effect by the delivery, not the date.

Thoroughgoods Case, *f.* 9.

Resol. 1. It is no matter who reades the Deed to him that is illiterate, If a stranger reades it in another sense then it beares, it binds not him that delivers it.

2. No man is tied to deliver a Deed, if it be not read to him in a tongue he understands.

3. Though the effect alone be declared otherwise then what it is, and the Deed it selfe not read to the party in expresse termes, yet is not he bound.

Wisemans Case, *f.* 15.

Tenant in Taile, remainder in fee, he in remainder in consideration of blood and other good considerations, covenants, to stand seised to his own use for life, with diverse remainders in Taile, the remainder in Fee to the Queen, Tenant in Taile in possession suffers a common re-

recovery, the iſſue in Taile and remainders are barred.

Reſol. 1. No uſe is raiſed to the Queen. The words *other conſiderations* are too generall, without a ſpeciall averment to raiſe an uſe; The conſideration that the Land may continue in his name and blood, extends not to the Queen, the deſign of it is to preſerve the eſtate taile.

2. The conſideration, becauſe the Queen is the head of the Commonwealth, cannot raiſe an uſe to the Queen, ſhe is obliged to defend the Realm as Queen.

3. The remainder limited to the Queen cannot ſave the particular Eſtates, only Eſtates by patent or proviſion of the King are within the ſtatute 34 H. 8. and thoſe tailes too might have bin cut off before that ſtatute.

Lanes Caſe, *f.* 16.

The King under the Exchequer Seal, grants a Leaſe of Lands held of him by Copy to A. he grants to the Copyholder, the King grants the reverſion in fee to B the term for years expires, the entry of B is lawfull.

Reſol. 1. Although commonly the Royall leaſes are under the great Seal, yet becauſe the uſe of the Exchequer is to leaſe under the Seal of this Court, this is the common Law, and the Kings other Courts are to take notice of it, otherwiſe is it of the cuſtomes of Courts *in pais*, or below.

2. By acceptance of the grant of the term the Copihold is determined, Theſe cannot ſtand together in one perſon, but no act of the Lords, not the ſeverance of the inheritance from the copihold can determine the copihold.

Baldwins case, f. 23.

H. Earl of C. by Indenture, Covenants and Grants, and lets to farme to B. and A. her son, and to the heires of A. To have, &c. for 99 years, and so from 99 years, to 99 years, till 300 years are expired, without impeachment of waste: This is but a lease for years to both of them.

Resol. If no ceremony be requisite to perfect the Estate in the premises, nor in the *Habend.* but delivery of the Deed; Or if one ceremony be requisite to perfect both the Estates, as attturnment, the *Habend.* contrary to the premises is void, admitting the Estate be expressed in the premises; But if an Estate be implied in the premises, and another Estate expressed in the *Habend.* the *Habend.* shall stand; and if a ceremony be requisite to perfect the Estate in the premises, and none requisite to perfect that in the *Habend.* which is contrary to the premises, the *Habend.* shall stand; so here, because livery is requisite to perfect the fee expressed in the premises, and nothing requisite to perfect the grant of the term in the *Habend.* but delivery of the Deed, the Land alone passes; for by delivery of the Deed they are possessed of the term, and the livery after is void.

Case of Bankrupts, f. 25.

C. indebted to T. and divers others, becomes bankrupt; The other Creditors sue a Commission upon the statute of bankrupts, C gives his goods in satisfaction of his debt to T who refuses to come in as Creditor; The Commissioners without view of the goods sell them t he other Creditors. *Resol.*

Resol. The sale is good, the intent of the statute is that the condition of the Creditors should be alike, and that one should not prevent the rest; Therefore the bankrupt cannot satisfie one, and defraud the others; however, not after the Commission awarded; The stat. establishes the sale of the Commissioners, and the Proviso to make the reall grants of the bankrupt valid, aides not those he makes after he is become bankrupt; only it delivers the Vendees from the penalty of the Proviso.

Object. The words in the statute, *or otherwise to order*, overthrow the Objection fetcht from the stat. where inrollment of Deeds and view of goods is required.

2. The sale ought to be severall to every one, rate and rate alike, here it is joynt. *Answ.* So is the debt.

3. True, the sale must be to all, *viz.* all that will come in, else not to all.

Bettisworth's case, f. 31. Mor. 250.

Lease for years of an House, a Close, and diverse other Lands, the Lessor makes livery in the Close in name of the whole in lease, the Lessee in the House, and no body for him in the Close.

Adjudged void.

1. The possession of the House, being the most worthy part, is the possession of the whole.

2. The Lessee cannot be upon every part of the thing demised, therefore is it enough if he be upon any part.

3. Perhaps he dares not forsake his House.

4. Livery of an House with the appurtenances, only its parcells passe, but to keep possession

against force, possession of the House is possession of the whole.

Lessee leases part, livery there, is not hindered by the first lessees possession of the other part, it is hindered if the lease be but at will.

Doddingtons case, f. 32.

Hen. the 8. *Ex mero motu*, &c. grants all those messuages late in the tenure of B and C. lying in W. the suburbs or liberties of W. parcell of the Hospitall, &c. The houses were in the Tenure of B. & C. but not within the liberty of W.

Res. 1. The grant is void at common Law, in the case of a common person too, for grants which refer to two certainties if both be not true are void, more forcibly because of the Pronoune *those*, which runs through the sentence, and cannot be satisfied till the whole be true.

2. Not within the statute, 34. *H.* 8. 21. which makes the Kings grants within seven years after, good, notwithstanding the misnaming of any Town, doth not helpe it; The grant is generall, and can imply no certainty, the Town shall not be conceived to be misnamed, but that nothing was intended to passe, which was not in W. otherwise this mischief will follow, The King is induced to grant all his Lands in D. in the County of N. belonging to the Priory, and he has none there, his Lands in S. belonging and shall passe. v. Bowtyes c. 3. R.

Sir *Rowland Heywards case, f. 35.*

Sir R. H. seised of a manor part in demesne, part in Lease for years, part in Copihold, by indenture inrolled, demises, bargains and sells it, &c. to W. and others the reversion, and reversions remainders of them, all Rents reserved upon any demise, for 17 years; to begin

begin after his deceaſe; After which he covenants to ſtand ſeiſed of the premiſes to his own uſe in Taile, no atturnement followes, he dies leaving a third part to deſcend to his heire.

1. *Reſ.* This cannot paſſe as a future intereſt at the common Law without atturnment in the life of H.

2. It muſt paſſe either intirely by bargain and ſale, or at the common Law, elſe will the manor be diſmembred againſt the agreement.

3. Although where the ſtatute and common Law joyne, the common Law ſhall be preferred, as the feoffees and *ceſty que uſe* joyn in a feoffment, it paſſes from the feoffees; yet is it not to be ſo here; but ſince there are words of grant at the Common Law, and of bargain and ſale by ſtatute; it is in the choice of the grantee to take one way or other; and notwithſtanding the eſtate is altered by the ſecond indenture, Sir R. H. dead, and the King intitled to wardſhip, yet the election remaines; they have an intereſt in them which they may paſſe over; For where one of two things is to paſſe by one title, nothing paſſes before election; but where one thing (as here) is to paſſe by one of two titles, it paſſes preſently, and the election may be made after the death of one of the parties. The heire Executors may chooſe, not ſo where nothing paſſes before election. When election is given to ſeverall perſons, nothing paſſes before election, and he that chooſes firſt prevents the others.

2. Election is given of two things, he that is to do the firſt act ſhall chooſe.

3. A grant is made of two things yearely, the grantor ſhal chooſe before, and after the day. The grantee after the day, if the thing be to be performed but once.

4. Election may be lost by a mans own wrong, as, the feoffee of two acres, one for Life, another in Taile, makes a feoffment in fee, the feoffor may enter into which he lists.

5. Generall entry determines not election. The lessees here, after their entry, choose to take by bargain and sale; which was their course to make the rents theirs. Yelv. 123. mon 241.

Bishop of Winchesters case, f. 43.

W. Plantife in a Prohibition shows, that the Bishop of W. was seised of the Mannor of *Eastm.* &c. discharged of Tythes by prescription, and demised part of the demesnes to the Plantife, the Defendant Fermor of the Rectory of E. has libelled against him, &c. for Tythes, to which he pleaded this matter; but the Judges would not allow his Plea: The defendant traverses the disallowance, the Plaintife demurrs, Adjudged for the Pl.

Three Points were moved:
1. Whether the prescription be good or no.
2. Admitting it good, whether the Plantif shall be advantaged by it.
3. Whether the travers be good.

To the first Point, three things are considerable. 1. Who was capable of Tythes at the Common Law. *Resolved.* None but persons spirituall (the Farmor of a person were he not spirituall himselfe could not sue,) except the King, who is a mixt person, and the Fermor by Prerogative. 2. Who may be discharged of Tythes at the Common Law: It was *Resolved*, a meere lay man may be discharged in his own

Lands

Lands. 3. How this diſcharge may be: it may be by grant or compoſition, not by preſcription. There is preſcription in the manner of paying Tithes, none not to pay at all; This in favour of the Church, ſpirituall perſons may preſcribe in this diſcharge, at the Common Law; Thus is the ſecond of E. 6. 13. to be intended.

2. In as much as a Biſhop, being a ſpirituall perſon, may preſcribe in the diſcharge of Tythes, good reaſon the Farmor take advantage of the preſcription, it may be the advancing his rent, might be the cauſe of the immunity.

3. The traverſe is inſufficient, becauſe the Iudges ſpirituall will not allow any Plea in diſcharge of Tythes; Therefore may the Plantife bring his Prohibition before any ſuch Plea made, and ſo this diſallowance of it is not traverſable.

Note, the Lord of a Mannor may preſcribe to pay a Pention, in lieu of the Tythes within his Mannor; and to have the Tythes of the Tenants of the Mannor, This ſpeciall matter ſhown, he may ſue in the Court *Chriſtian*; But without this ſpeciall matter, Tythes cannot be appurtenant to a Mannor.

Archbiſhop of Canterburies caſe, f. 46.

A College and Rectory appropriate to it, is given to the King by the ſtat. 1. E. 6. and A. to whom the Lands of the College were conveyed from the King, brings a Prohibition againſt the Rector, who ſues him in the Court *Chriſtian* for Tythes; He pleads the 31 of H. 8. for diſcharge of Tythes, and that at the time

of the making the stat. 31 *H.* 8. and that of 1 *E.* 6. the College and Rectory were united; upon demurrer a consultation was granted.

1. *Object.* This Colledge came to the King as well by the stat. 31. *H.* 8. as the first of *E.* 6. For that of 31 *H.* 8. is generall, All Monasteries which shall come to the King by dissolution, or by any other means shall be in the King by force of this present act; and if so, then doth the clause of discharge of Tythes in 31. extend to it; This was denied; for when that stat. speakes of dissolution or any other meanes, an Act of *Parliament* could not be meant the meanes, had that been meant it had led the order, not come in shufled amongst the inferior meanes; 2. The first of *E.* 6 Ordaines, that it shall be in the King by force of that statute, and in that, has it taken away the stat. of 31 *H.* 8. as being the later Law. 3. The form of pleading is that some were in the King by the stat. 31. of *H.* 8. others by the stat. 1. *E.* 6.

2. Admitting it comes to the King by stat. 1 *E.* 6. only; it was objected the clause of discharge from the day, in the stat. 31. *H.* 8. extends to it. For the words *late Monasteries* extend to Monasteries then in being, and after given to the King; and the words of the stat. are generall, *any Monasteries*; But this were impossible that the stat. of *H.* 8 should relate to the first of *E.* 6. without the spirit of Prophecy.

3. And supposing it came to the King by stat 31 *H.* 8. such generall allegation of unity is not sufficient, the unity must be lawfull and perpetuall, else it is no unity within this stat. For though the Rectory were ever united with the

the College, yet if the Tenants of the College paid Tythes to the College, the case is not compriſed in the ſtat.

Note *fol.* 480. it is ſaid contrary to this reſolution, that if the King take by 1 *E.* 6. ſuch generall allegation is not good, if by 31 *H.* 8. it is good & ſuch is the uſe in Prohibitions *. **Hub.* 419. *rep.* 11. 14. *Contr.*

4. Eccleſiaſticall houſes not religious, are not given to the King by ſtat. 1 *E.* 6. it ſpeakes in the copulative *Eccleſiaſticall and Religious.* 2. The ſtat. gives to the King all ſuch as are and ſhall be diſſolved, but none were diſſolved before, which were not religious; The Eccleſiaſticall therefore are without the ſtat. 3. The ſtatute makes their charges void, and it were dangerous if Deanes and Chapters, and ſuch Corporations by ſurrender to the King might defeat their former grants.

5. By thoſe words, the King ſhall have, &c. in as large and ample manner, and he ſhall not have them diſcharged of Tythes, he may have them in as large a manner, though Tythes be paid, becauſe Tythes are collaterall to the Land.

Sir *Hugh Chomlies caſe, f.* 50.

C. Tenant in Taile remainder in Taile to G. C. has iſſue the Wife of the Plantife, G. for 20 li. bargains and ſells to W. by indenture inrolled for the life of C. the remainder to the Queen upon condition of payment of 20 li. by G. to be void, C. ſuffers a Recovery to his own uſe in Fee, the condition is performed; The Queen to avoid the covin grants her remainder to C. G. makes ſuch another grant as the former out of the Land, C. ſuffers ſuch

another recovery; dies, without issue male: the condition is performed, G. sues an *Amoveas manum* and enters upon the daughter, she and her husband bring an action of trespasse. Adjud. for the Plantife.

Resol. 1. The remainder to the Queene is void, because the particular estate is void; for the remainder granted during the life of Tenant in Taile, can never take effect in possession.

Object. 1. That C. may enter into religion, is a forraine possibility, and not imaginable. 2. The grant to the Queen is void, because it is built upon the expectation of a thing which is against Law. 3. G. having granted all his estate to W. the Tail is in abeiance and nothing left in him to grant over to the Queen.

2. Be it that the particular estate be not infirme, it is barred by the recovery, and so the condition, which cannot be performed because the intire estate cannot revest; and the estate Taile is barred, because out of the stat. 34 H. 8.

It was argued, that here neither Petition of right, nor Monstrance of droit were needed, The condition was performed by one subject to another, and the particular estate of the subject once devested, the Queenes remainders falles of it selfe; Others againe deny this, and will not allow any devesting out of the King without record, but where the devesting out of a common person is without Action, Entry or Claim. So as here the Queens remainder shall privilege the particular estate, and G. shall not enter; of this there was no resolution. But it was agreed, that after the condition performed the remainder was not devested without claim,

claim, no more then a frank Tenement without entry; use might cease at the common Law without claim, not so now it is transferred into possession; and the second grant cannot operate as a claim, being made of the Land; so that admitting the condition well performed, there being no claim, nothing is devested out of the Queen, and by consequence her grant to C. good.

Against the grant was objected, 1. The Queen recites that the remainder is granted by Covin; and no Covin discovered, 2. That her estate is conditionall; whereas the condition was discharged for the life of W. To the first the Covin is apparant, to the second the recitall of a thing past not valuable, cannot hurt the grant; and although the Queen sayes the remainder was granted to her upon condition, she sayes not it remaines so.

Buckler and Harvies case, f. 55.

Tenant for life, leases for years, grants to A. for life from a day to come, lessee for years atturnes after the day, the term expires, A enters and leases at will, the lessee for life levies a Fine cõe cco, to the Tenant at will, remainder enters

Resol. 1. The grant for the future for life is void, no frank-tenement can begin in the future. 4 Co. 2. 153, A 563.

2. Atturnment, &c. makes not that good, which was vicious in the beginning.

3. C. is a disseisor, he enters not by colour of a grant, as the feoffee before livery, but by colour of a void grant.

4. Lessee for life levies a Fine to a disseisor,

it

it is a forfeiture of a right to him that has but a right.

5. The fine is a forfeiture, neither can plead the parties to the fine had nothing.

6. The disseisee levies a fine, the disseisor shall keep the Land for ever.

Beckwithes case, f. 56.

Husband and Wife levy a Fine of the Lands of the Wife, both limit severall uses severally, Adj. both are void, The fine shall be to the use of the Wife and her heires.

Resol. 1. If the Husband had limited the uses, and the Wifes dissent appeare not, it shall be intended done by her consent.

2. Husband and Wife sell the Land of the Wife for money, the Wife is bound, though there be no Deed to prove her consent.

3. Neither can limit uses alone, they ought to agree in the limitation.

4. Variance in part of the estate makes all void. In part of the Land is only void for so much; two joynt Tenants vary, the limitation is good for either of their parts, in this case, though the Husband join with the Wife for conformity, the use must follow the owner-ship of the Land without regard to estoppels, and be to the Wife alone.

Julius Winningtons case. 59.

W. enfeoffees B. upon condition to reinfeoff himselfe for life, the remainder to I. his eldest son in fee; W. takes the profits without the assent or disseasement of B. after he leases for y ars, and yet continues possession, B. acknowledges a statute staple, W. infeoffs A. and dies,

B.

B enters and inſcoffs I. the Defend. the Plain. is barred.

Reſol. 1. The feoffor by taking the profits much more by the leaſe is a diſſeiſor.

2. The leaſe diſpences with the condition during the terme.

3. After the diſſeiſin the ſtatute of the feoffe is not a breach of the condition untill a regreſſe, before which the ſtatute may be releaſed or ſatisfied, and that Land is not lyable to an extent till then. Alſo the feoffor by his feoffment has extinguiſhed the condition, therefore is the entry of B. lawfull and his feoffment good.

Wiſcots caſe, f. 60.

A. Tenant for life, remainder to B. and three others for life, he in reverſion leavies a fine to the uſe of A. for life, remainder to B. in fee; A dies, and B. the joynture is ſevered.

For if a Leaſe for life be made to two, and the heires of one of them, they are joynt-Tenants, if the Leaſe be to two for life, and after the reverſion is granted to one of them, the joynture is ſevered, for here the grant of the reverſion drownes the particular eſtate; in the firſt caſe it cannot be drowned, becauſe it was not in being at the time of the reverſion granted.

2. A Leaſe from Husband and Wife pleaded, no need to plead made by Deed.

Tookers caſe, f. 66.

I. Leaſes for life to T. and R. and dies, his heire grants the reverſion to E. T. alone atturnes, and ſurrenders to E. who enters, R. brings an action of treſpaſſe, adj. for the defend.

Reſol. 1.

Resol. 1. The atturnment of one joynt-Tenant for life, vests the whole reversion. 1. Because the reversion is intire. 2. Because it is a lawfull act. 3. Because he passes no interest, but only compleats the grant made before. Therefore the disseisors atturnement binds the disseisse, but one joynt-Tenant shall not atturne of Record without his fellow. 1. Because the atturnement must be in the manner the grantee demands it, 2. Because by generall atturnement without claim of advantages he may prejudice his companion, which mischiefes are not in atturnements below.

2. Atturnement cannot be apportioned; if it be made to one grantee of the reversion it enures to both, it must be according to the grant; if the reversion be granted for life, the remainder in fee, he for life dies, the atturnement to him in remainder is void: but if the reversion be granted to two, one dies, it is good to the Survivour; To atturnement in Deed, perfect notice is required, not to atturnement in Law, because the Law implies notice; Atturnment or other agreement may be in absence of the grantee, disagreement cannot.

Note, one joyntenant may prejudice another in the profits of the land, not in the Land it selfe; so in personall actions, not in reall, nor mixt if the reality be principall, if the personalty be principall, otherwise.

Lord *Cromwells case, f. 69. No. 47.*

B. seised of a Mannor with an Advowson appendant, by indenture the first and second P. and M. bargains and sels the Mannor to A. and covenants to suffer a common recovery to the use of A. in fee, rendring to B. 42 li. by year, and

and also to levy a fine to A. and that the said A. shall render by the fine the said rent: provided that the said A. shall grant the advowson to B. for life, and if he die before any avoidance happen, then one turne to his Executors; it was covenanted by the same Deed, that all assurances to be made shall be to the said uses: The recovery is had, B. and A. levy the fine to P. who renders the Mannor with the advowson to A. in fee, and the rent to B. proclamations passe; A. dies before the grant of the advowson, the Church becomes void in the life of B. E. enters as heire of A. B. enters, and without any request for the advowson, bargains and sells to the Lord *Cromwell*, for whom it is adjudged.

Resol. 1. This proviso is a condition, for a condition has no certaine place in a Deed, but may be any where as the parties please. Proviso is a fit terme for a condic'. 1. If it stand of it selfe. 2. It it comes from the mouth of the bargainor, Donor or feoffor. 3. If it be compulsative, as here.

Object. 1. It was objected, this could be no condition. 1. Because the indenture was not inrolled, so nothing passes by it, and therefore the condition in that deed to be void, because a condition ought not to precede the estate. 2. A. had nothing but covenants from B. and in equity B. should have nothing but covenants from him. 3. In the sentences before and after the Proviso, it is said, *And it is farther covenanted and agreed*, so then the Proviso being inclosed with Covenants, must be it selfe a Covenant. 4. Were it a condition, it refers to the fine mentioned next before, not to the recovery which is more remote.

Answ.

Anſ. To which was replied, 1. It was not meant any eſtate ſhould paſſe by the indenture, only that that ſhould guide the uſes of the fine and recovery, and in the Deed which guides the uſes, is the condition to be contained. 2. Then that it is not injuſt, that he that paſſes an eſtate, ſhould annex his own condition to it, He that may give may diſpoſe. 3. Next the Proviſo loſes not the ſtrength of a condition, becauſe it is thruſt into the heap of Covenants, no not if the words of Covenant had got into the clauſe where the Proviſo lies; more ſtrongly out of the words of the *Habend.* which are, *to have in manner and forme as followeth*, by which it is plaine he was to take *ſub modo* thus or thus. 4. To the laſt the Condition looks not towards the fine or recovery, but to the eſtate, and makes that conditionall.

2. After the recovery, the eſtate of the Mannor is executed to A. and B. ſhall have the rent, although the Mannor was limited firſt in the indenture; and the rent muſt iſſue out of the eſtate of the recoverours; This by conſtruction of ſtat. 27 *H.* 8. and intention of parties.

3. The Condition is not extinguiſhed by the fine. 2. Becauſe it is provided by the indenture which guides the uſes, that all aſſurances hereafter to be made ſhall be to the uſes in the indenture, and thoſe are ſubject to the Condition. To that, that the Condition muſt be in the ſame Deed, it was anſwered it need not, as a releaſe and condition in another Deed are, delivered at the ſame time; more ſtrongly here, for the fine cannot receive the condition, it muſt be in the indenture or no where; and although the fine be abſolute, it is no concluſion to the condition, the indenture which is the place of that, guides

the

the fine. 2 The Indenture, Recovery and Fine are but one assurance in Law, like a Lease for life of Lands in two Counties, with rent reserved, and livery made in two dayes; objected this fine was upon grant and render, and no averment can be taken upon such a fine without a deed which proves it; and the first indenture cannot serve the turne, because the conusee is no party. 2. It was granted, the fine refers not to any new consideration; and a fine with grant and render implies a consideration in it selfe. 3. The fine was levied to a stranger, who is not to be subject to their limitations. 4. The rent by the indenture is to be rendred to B. in fee, and it is rendered in Taile; the remainder in fee to another; The resolution was: it is true the Fine upon grant and render cannot be averred to another use, but to another consideration then what is expressed it may; and be there a small variance betwixt the Fine and the Indentures, this may be helped by verball averment. The conusee is but an instrument, and nothing shall be reputed to passe from him, but it shall be taken for the act of the conusors, and if he shall refuse to render, the use will rise whether he will or no by the Indentures, so that he is not to be made a party; and if any thing destroyes the condition it is the conusance of the Fine, yet the conusors are no strangers to the Indenture, and that guides their act; B. too joynes but for conformity to be able to accept the rendre of the rent, and he that joynes for conformity upon speciall matter shown shall avoid estoppels: The alteration of the estate and the rent is not to purpose; because the Law remaines as it was limited; and although the rent was limited to B. in fee, if B. be content

to

to accept it in tail, the remainder over, no man is prejudiced by it.

4. By the death of A. before the grant of the advowson to B the condicion is broken: For generally when A. is to do an act to another, and no time is limited, his own life is his time, if he be not haſtened by requeſt; death breaks the condicion: but in this case of advowson A. has no time for his life, but upon contingency, if there be no avoidance of the Church in the mean time; for after it becomes void the grantee cannot have the plain intent of his bargain: So of like cases, and if a day be appointed, the condicion muſt be performed in the life time. When a ſtranger is to take, he that is to enfeoffe muſt goe to him, and deſire him to appoint the day when he will accept; in this case the feoffee is not to be requeſted: he to whom the performance is to be made dyes before the day, this breaks not the condicion; otherwiſe of him that is to perform, though he have not convenient time to doe it in, for time is not materiall.

Land in grand ſerjeanty aliened without licence, no forfeiture.

Bingham's case. 91.

B. the grandfather holds of Sir I.H. by Knights ſervice, he levies a fine to himſelf and his wife and his heirs, then another fine to the uſe of himſelf for life, the remainder to the father in taile, the reverſion to his own right heires: the father dyes, Sir I.H. ſuffers a recovery to the uſe of himſelf and his wife in tail, the remainder to Sir R.H. in tail, remainder to his own right heires; Sir I. and his wife dye, Sir R. enters, the grandfather dyes, the ſon within age leaſes to A.

Reſ. 1. The grandfather has a fee expectant upon

upon the estate taile as a reversion, not as a remainder.

2. Sir R. H. shall not have the Wardship of the land, because not the tail, but the reversion in fee is held of him: Therefore if tenant in taile with a reversion expectant held by Knight service of a common person dyes, his heire within age, he shall be in ward to the Lord for his body, not for the land; more forcibly here, because the fee and the tail discend from severall Ancestors, the reversion is like a mesnalty betwixt the Lord and tenant.

3. Had the grandfather been tenant for life, the remainder to the father in tail, remainder to him in fee, he dyes, the Lord grants over the seigniory, the grandfather dyes, the son shall not be in ward, the father was not tenant to the grantee at the time of his death, and the death of the grandfather was no cause of the wardship, only it removes the impediment. 2. When two acts are requisite to the consummation of a thing, one happens in the time of one, the other in the time of the other, none of them shall take advantage of it: as tenant ceases one yeare in the time of the father, another in the time of the son, so here.

4. The Lord shall not have the third part by the statute of wills, which in case of the King and other Lords is expounded of him to whom the devise is made, and to no other heire or purchaser.

Lib. III.

The Marqueſſe of Winchesters caſe.

L and M. jointenants for life, the remainder to L. in taile, remainder to N. L. ſuffers a recovery, N. having iſſue N. is attainted and executed, and by ſtatute 28. H. 8. all his lands, conditions and rights are given to the King as forfaited; L. dyes without iſſue; M. dyes, *Q. El.* gives grants and reſtores the lands to the Lord N. and brings a writ of error againſt the M. of W. as heir to the ſurvivor of the recoverors; Adj. againſt the Queen.

1. Excepted to the Writ, becauſe error is brought of the whole Mannor, and it appears by the plea of the pl. that it is void for the moity, the other jointenant not being named. 2. The remainder is not averred to continue in N. at the time of the recovery. 3. The recovery is of M. and the writ of error is to remove the record of the recovery of M. in M. therefore the record is not well removed. 4. It is not ſaid that N. had the remainder at the time of his treaſon and after. 5. The land is in the King by attainder and death, becauſe of the miſchief of the *præcipe*; but there is no miſchief in the writ of error, therfore ought there to be an averment that office is found.

The Court reſolved nothing but that the record is well removed.

Reſol. 1. This writ of error is not given to the King by the ſtatute. 2. Becauſe it is a writ of action, which ſhall not be granted to him by generall

nerall words of right; for right is to be intended such right as may eschete or forfeit, right of action cannot; it is in privity, and it would not be a little troublesome if right of action should be given to the King by such generall words; right of action to chattells passes by these words, those may be forfeited.

2. N. has no right to the moity of the manor from the erronious recovery, till the recovery be reverst; as tenant in taile suffers an erronious recovery, and disseises the recoveror, and dyes, it is no remitter to his heire; for right without action or entry, or action without right, makes no remitter; but the recovery for the other part works by way of conclusion, which estoppes not the issue in taile, nor him in remainder.

3. N. himself could not have had a writ of error at the time of his attainder, because the particular tenant was alive; had he bin party to the recovery he might.

This case of such remainder is out of the st. 9. R. 2. c. 3. which gives the writ of error to him in reversion in the life of lessee for life; N. has meerly a possibility of action, and that is not given to the King.

4. Were it so that the writ of error were granted to the King by statute of H. 8. it is not granted by the grant of the mannor to the Lord N. if it passes it must passe by prerogative, which can passe nothing without expresse words.

Husband levies a fine, rendre is made to him and his wife, this is but voidable.

2. Husband and wife are jointenants for life, the remainder to the heires of the husband, who suffers a recovery, this is no barre to the issue for any part; there are no moities betwixt the husband

band and wife, nor was there any lawfull tenant to the *præcipe*.

Cuppledikes case. f. 5.

Husband and wife jointenants for life, the remainder to the husband in taile, the husband suffers a recovery as vouchee, this barrs the remainder, though the wife joines not, here was a lawfull tenant to the *præcipe*; the husband comming in as vouchee, comes in in privity of the estate, and the recompence goes to the issue in taile; but had the wives inheritance been joint with the husband, it might be doubted whether the issue had been barred or no.

Heydons case. f. 7.

Gardian and Canons Regular the year before the statute of dissolutions lease for years land held by Copy, and surrender to the King; the lease is void by the statute, which makes leases within a year of the statute of no force, and leases for life by custome are as well within the sense as leases at the common law; the mischief is all one; these dying Corporations would not stay for the hand that should pluck them up, the designe was to throw themselves down, foreseeing their fall, and choke the Kings way that was to come in.

Generall statutes extend to Copyholds, where neither Lords nor tenants are prejudiced, where they neither over-turn service, tenure, or custome. The statute of W. the 2. reaches not to them.

Dowty's case. f. 9.

N. seised in fee of five messuages in S. parish in H. in the tenure of W. G. grants, bargains and sells

sells by Indenture his tenements in St. A. in H. in the occupation of W. G. is attainted and executed, Queen *El.* grants them as concealed, the Patentee enters, Att'. informer.

Res. 1. Nothing passes, the first certainty is false, it were * otherwise if the first were true, the second false, the bargainees are disseisors.

* *Rep.* 2. *Doddingtons case contrary: and ch. Iust. Hubard Winchcombs case.*

* 2. These lands were not in the Queen by stat. 33. H. 8. without *scire fac.* or seisure, the words of the statute, that *Lands shall be in the King without office*, is to be intended as if office had bin found, and lands of the disseisee attainted shall not be in the King by office, without *scire fac.* or seisure; also the statute has a saving of the possessions of all strangers.

3. The Queen has but a right, which cannot passe without speciall words; Therfore the grant and bargain and sale is void, the Queen has the title.

Sir Will. Herberts case. f. 11.

M. H. acknowledges a reconusance of 3000 li. to the K. & dyes, *scire fac'* issues against his executors, & against the heirs of his lands and tenements; the Sheriff returns, he has no executors, and that *scire fecit* W. H. heir of the said M. who makes default, judgment is given, he brings a writ of error.

Res. 1. At the common law, unlesse in speciall cases, neither land nor body were subject to execution in debt or damages recovered, onely *fieri fac'* or *levari fac'* upon goods, chattels, and profits growing upon the land, were the remedies.

In

In debt against one as heir, the land was liable to execution, the goods belonged to the executors; The body, goods, and lands of the debtor or accountant of the King, were ever subject to execution.

2. The land of the heir is in execution upon the recognisance of his ancestor; he shall not have contribution against any purchaser of his father, though he comes in without consideration, & although the heir is not charged as heir, but as tenant of the land: one purchaser shall have contribution against another, and one heire against another: Therefore does the writ here well issue against the heir, without naming the purchasors.

Note, Divers acknowledg a recognisance, it survives not, the lands of all shall be in execution equally: So two are bound to warranty, the survivor and the heir of the other shall be vouched together: Husband and wife, and the heires of the wife bound, the husband alone shall render in value, there are no moities betwixt them.

Errors. 1. The *scire fac'* was *scire fac' To the heir of the lands, &c.* which is improper, the heir is not heir to the land, but to the ancestor. 2. The writ is *scire fac' to the heir of the lands*, and the return is, *scire feci to the heires of M.* 3. The judgment is generall against Sir W.H. it ought to be speciall, otherwise his purchased land must be charged by the execution. No resolution was given to these.

Boraston's case. f.19.

T. has issue G. and H. H. has issue B. and C. T. devises to A. for 8. years, and after to his executors for payment of his debt, the remainder to B. in fee, T. dyes, B. dyes at the age of nine years, C. after

C. after the term expired enters, G. enters and leases to the plaintiffe: Adj. for the def.

Object. Argued for the plaintiff, that the remainder to B. was but contingent, to take effect when he should come to the age of 21. years, and the executors lease for so many years as are not accomplished of his full age, is not absolute, but under a manner, *viz.* if he live so long: therefore the term being uncertain, the remainder is contingent.

For the def. it was replyed, That the executors term is certain by intent of the devisor, who had computed, that the profits of his lands those years of his Nephews nonage would be sufficient to pay his debts: Therefore the sense of the words, *Untill B. come to the age of 21. years, is, or may come, &c.* otherwise the intention of the devisor should be frustrate: And the term being certain, so is the remainder.

Walkers case. f. 22.

Lessee for years assignes over his term, the lessor brings an action of debt against the lessee, for arrears due after assignment. Adj. for the plaintiff.

Object. There is a diversity between contracts reall and personall; if the obligor be to pay 20 li. at severall dayes, no action lyes till they be all past; debt lyes for arrears of rent upon a lease for years, after every day it is behind: so contracts personall follow the person, reall the land; therefore may the lessor sue the assignee, as the grantee of the reversion, not the grantor shall sue for arrears due after the grant; The contract is annexed to the land, and the rent apportionable with it.

Answered: By the assignment, privity in

eſtate, not in contract, is taken away: 1. The leſſee by his own act cannot free himſelf from his contract: 2. Elſe might he aſſign to the poor, who cannot pay; If Tenant in fee enfeoffs, the privity in eſtate is gone, not that as to avowry till notice; ſo before ſtat' Weſt. 3. Land is conveyed to be held of the chief Lord, the Lord might avow upon the feoffor.

Note. The privity of contract here is only perſonall, betwixt the leſſor and leſſee, and determines by the death of either; if the leſſor accept from the aſſignee, the election is gone.

Butler and Bakers caſe. f. 25. *Mo.*

B. ſeiſed of T. and F. and he and his wife ſeiſed jointly of H. in tail, for the jointure of the wife made during the coverture, T. amounts to two parts, F. and H. to a third part, T. and H. are held in *capite*, B. deviſes T. to his wife, on condicion ſhe claim not her jointure; ſhe refuſes her jointure by words *in pais*, and enters in T. the will is not good for whole T. but for ſo much as may remain over a third part to diſcend.

Reſ. 1. At the common Law, ſuch diſagreement below cannot deveſt the franktenement out of her, verball refuſall is ſo weak it may be waived of record. 2. It is not to be ſuffered that a franktenement ſhould ſo lightly be deveſted, this were miſchievous to the *præcipe*: but act below may amount to agreement or diſagreement, and words are of power to diveſt a chattell, as he to whoſe uſe an obligation is delivered refuſes.

2. Before the ſtat' 27. H. 8. verball waiver was enough for uſes, not ſo now they are transferred into poſſeſſion; yet was this a good diſagreement

to the jointure by the same stat', which allowes the woman whose jointure is assured after marriage *To refuse.*

3. H. being refused, the relation of the discent of that shall not make whole T. to passe. 1. Relations are fictions of the law, and intent to one thing, and it is a fiction of the law to make a nullity from the beginning, but it is to a certain intent, not to every collaterall intent, as here. 2. Relations often aid acts of the law, never void acts of the parties; and as relations intend certain things, so they intend certain persons: These are the rules of all fictions of the law.

Jennings and Braggs case: Disseisee leases by Indenture, delivers it as a writing to be delivered as his deed upon the land, it is done, This is a good lease.

Res. 1. When at the time of the first delivery the deliverer was not able to contract, before the second delivery he is, the contract is void; otherwise, were he able, but some impediment in his way, which before the second delivery is removed. *Res.* 2. The deed shall take effect by the first or second delivery, *ut res magis valeat, &c.* that the act may be of force rather then fall. 3. The deed as to a collaterall act shall have no relation to the first delivery.

Ratcliffe's case. f. 37.

W. takes to wife E. the daughter and heir of I. and A. his wife, has issue I. a son and two daughters E. and M. devises the custody of them to I. and A. E. the daughter marries R. I. dyes, A. devises to I. the son in taile, remainder to E. and M. equally to be divided in tail, remainder to E. A. dyes and I. the son without issue, E. marries to W. A. M. abiding in the house of R. and

E. by assent of R. betwixt the age of 14, and 16. departs eight miles off, and marries to E.R. who leases to the plaintiff: The issue was, whether had the custody of M.

Res. 1. The father onely to be guardian in nature, he onely may sue Ravishment of ward against the Gardian in Knights service, any ancester may sue it against a stranger.

2. By stat' 4. & 5. *Ph.* & *M.* c. 8. the wardship of M. belongs to E. that ordains two kinds of wardship, one because of nature, another because of assignation; it appoints the first to the father or mother, unlesse the father assign.

3. The consent of R. works nothing, the wardship is inseparably fixed to the person of the mother by the law of nature, so that the marriage cannot transfer it to the husband, nor is it forfeitable.

4 Eight miles distance cannot take away the custody of E.

5. The words, *Equally to be divided*, make E. and M. tenants in common.

6. By this stat' the mother E. shall enter: so of the stat' 6. R. 2. she was to have the land after the death of her that is married, she is next of bloud. The brother of the half bloud may enter within this Act, but to inherit there must be two blouds: if the father be attainted, the son born afterwards cannot be heir to the mother he has not two blouds; to exclude the brother of the half bloud in the axiome, viz. *The brother possession of fee simple makes the sister heire*: 1. The other brother must be tenant of the franktenement: in possession or reversion: 2. It must be of an inheritance that may be possessed, not of dignity.

The issue was joyned upon a collaterall point whether

whether E. had the custody of M. at the time of the contract, so the points, who was next of bloud, and who to enter, could not come into question: the plaintiff had good right against the defendant, yet because the issue is found against him, Judgment, *He shall take nothing by his bill.*

Boyton's case. f.43.

B. arrested by *Capias*, the Bailiffes mistaking the day of the Return, bring him to *Westminst'*, and at the request of B. carry him to L. in another County, keeping him in ward till the day of the Return, then they deliver him to the Kings Bench: B. brings an *audita querela* against the Creditors, Adjudged against him.

Res. 1. The Sheriff carries his prisoner in execution in the same County, into another County, this is an escape: But if the Prisoner by force of *Habeas corpus* &c. be brought to *Westminster* at the Return day, though he has been in divers Counties in the mean time, this is no escape, the effect of the command is performed; it may be dangerous if the Sheriff should be forced to *Westminster* in a direct line: in the barr case, which is stronger, there is the plaintiffs request.

2. The Sheriff retakes the escaper against his consent, he shall have no *Audita querela*, the escape was his own wrong.

Sir Geo. Brown's case, f.50.

R. and his wife joyntenants in speciall tayle remainder to R. fee, R. dyes, A. their issue levies a fine with proclamations to B. the wife discontinues without warranty, B. claiming by vertue of 11. H. 7. enters and leases to the plaintiff, Adj. for him.

Ref. 1. The leaſe without warranty is a forfeiture; the word warranty in the ſtat' referres to releaſes and confirmations, which cannot grow diſcontinuances without warranty.

2. Should nothing paſſe from A. but his remainder in fee, A. were to take advantage of the ſtat', his title being then immediate.

3. But his eſtate taile is barred, and B. is to enter.

Ridgway's case. f. 52.

Debt againſt the Sheriff of L. for eſcape in D. he pleads, the priſoners eſcape was his own wrong, and that he took him by freſh ſuit at S. Plaintiff replyes, he was out of view.

1. *Ref.* The retaking the priſoner upon freſh ſuit (who eſcapes as here) ſaves the eſcape, if no action be brought before the retaking: and if the action be brought, the Sheriff may keep the priſoner in hold till himſelf be anſwered; but the party at whoſe ſuit the *Capias ad ſatisfa'* iſſues, ought not charge the ſheriff in an eſcape, if the writ be not returned and filed, he is to have new execution.

2. The bar is inſufficient, he juſtifies by retaking in S. and anſwers not to the eſcape in D. but the pl' loſt the advantage of this, becauſe he demurred not.

3. After demurrer no repleader may be without conſent of parties.

Lincoln Colledge case. f. 59.

C. and F. jointenants for life, and to the heirs of C. entermarry, have iſſue E. who after the death of C. diſſeiſes F. and ſuffers a common recovery, F. releaſes with warranty and dyes, this collaterall warranty bars the eſtate tayl.

Object.

Object. The recovery with single voucher bars not the estate tail, because E. was not seised by force of the tail; nor the warranty, which is void by stat' 11. H 7. against all persons: and although E. is not relieved by the stat', because the recovery is of force against him, yet the issue is; and he might be relieved too, were the recovery reverst by error.

Resp. 1. This discontinuance with warranty is not void by stat' 11. H. 7. but voidable by entry of him who has title after the death of the wife.

2. The warranty here is out of the intent of the stat', which avoids acts in prejudice of the issue in tail, or him in remainder, but this warranty prejudices not the heire, but corroborates the estate granted by him, which shall be intended to his benefit: 2. It is reasonable that the tail may be cut off this way, as well as by joyning in a fine, or surrender of the wife, and recovery after against the heire; for by the same reason recoveries against tenant for life, in which he in remainder is vouched, are out of the 14. *Eliz.*

3. The issue in tail can never avoid the warranty, it was made in the life of A. and he cannot be advantaged by reason of the recovery; no man shall be the better for this stat', but he that has right at the time: had the release been after the death of E. or the recovery against the wife, the release by E. the issue might avoid it. Had C. dyed having issue a daughter, his wife big with a son, the daughter enters not, or disables her self, this hurts not the son: the case upon 6. R. 2. is otherwise, which gives title to the next of bloud, and he that enters by reason of the stat' 11. H. 7. shall not be in ward, though not of age, because his ancestor is not dead.

4. Tenant in tail in of another estate, suffers a common recovery, a collaterall ancestor releases with warranty, the recoveror infeoffes to uses which are executed, though he to whose use is in in the *Post*, he shall rebut, because he is in by limitation. *Quære*, whether the Lord by escheat shall rebut.

Pennants case. f.64.

P. leases on condicion the lessee shall not alien any part, the condicion is broke, the lessor before notice accepts rent due after.

Resol. It is no confirmation, the assignment may be so secret, the lessor can not know it; otherwise, were the condicion to pay the rent, the lessee must needs know when it is behind, there acceptance or distresse after breach is a confirmation, where the lease is to be void by entry; but acceptance of rent for which the demand is made, is no confirmation; where the lease is to be void, no acceptance confirms: Difference between lease for life and years, lease for life to cease upon nonpayment, acceptance of rent confirms, it cannot cease without entry, nay though the rent was due before the breach, because he cannot accept it upon contract (as in case of lease for years) but as a rent, and by this he affirms the lessee to be his tenant.

If rent be due severall dayes, an acquittance for the last discharges the whole arrears; otherwise in the case of an annuity, the grantor needs not pay without an acquittance. Note here, the acquittance may be pleaded as an estoppell.

Acceptance of rent by the hands of the feoffee discharges the arrerages in the time of the feoffor: if the feoffor be dead, then must the Lord take the feoffee for his tenant; Acceptance of

of rent and services from the feoffee, barrs not the Lord for his relief due before, that is but an improvement of service. Lord accepts services from the son, he loses his wardship by statute *Marlb.*

Westby's case. f. 71.

The Sheriffs of L. in the ending their office, by Indenture deliver B. in execution to the new Sheriffs, and where he was in execution at the suit of C. and D. D. onely is named, C. sues the escape, has judgment to recover.

Res. 1. B. is within the walls of the prison, but as to the execution of C. not a prisoner, he is not in custody of the old Sheriffs, they have delivered him over; nor of the new, they were never charged with this execution.

2. The old must acquaint the new sheriffs with all executions, though they be upon record; The prisoners are in custody of the old Sheriffs, though out of office, till delivery to the new.

3. If the old Sheriffe dye, the new must take notice at his perill.

4. Between the death of the old and the comming in of the new, the prisoners are in the custody of the law.

Dean & Chapt. of Norw. case. f. 73.

King *Henry* 8. 2 *May* 30. H. 8. translates the Priory and Covent of N. of the new foundation of H. into a Dean and Chapter: 2. E. 6. they surrender to the King their Church and possessions, the King incorporates them by the name of *The Dean and Chapter of the holy and undivided Trinity N. of the foundation of E. the 6.* and regrants their possessions, omitting the words, *Of*

the foundation of Ed. the 6. These possessions were begged as concealed.

Resp. 1. The translation by the King, without the consent of the founder, was good; the Pope might do it, nor is the founder wronged, notwithstanding the translation he is founder still: but were the translation void, it is confirmed by stat' 35. of *Eliz.* which confirms not onely all Corporations by *Hen.* 8. but all Letters Patents concerning their erection.

2. The grant of *Ed.* 6. is good, notwithstanding the omission of those words, *Of the foundation &c.* notwithstanding the surrender the ancient Corporation remains, they may exercise their office, *viz.* consent to the Bishops grants, and in Christian policy (the Church not being likely to continue without sects and heresies) to be of his counsell, and assist him in Church-affairs. The lands were anciently the Bishops, since given to the Dean and Chapter, therefore no necessity that they have any lands.

3. Without them (which were very mischievous) the Bishop could not be chosen: However the 1. E. 6. makes all good.

Fermor's case. f. 77.

T. possessed of divers parcels of Lands within the Mannor of S. for years, at will, and by Copy, and of others in fee there, demises the whole to C. for life, then levies a fine to him &c. of so many acres as amount to the whole land, continues possession, and payes the rents to the Lord; five years passe, the Lord is not barred: 1 It was not the intent of the stat' 4. H. 7. to establish fines levied by the lessee, to defraud him in reversion: 2. Nor to enable those to levie by covin, who before the stat' could not levie,

levy; it being to the disinheritance of him in reversion. 3. All acts, as fine, recovery, sale in open market, mixt with covin are void; and to manifest the judges care to preserve the estates of lessors, against non-claim. If lessee levies a fine the statute shall be construed against the words, the lessor shall be allowed five yeares after the death of the lessee for life. 4. This non-claim prejudices not the lessor; he was forced to it by the lessee, whose conveiance was so close he could have no notice that any fine was levied of that Land.

Twines case, f. 80.

P. Indebted to T. in 400 l. and to C. in 200 l. C. brings an action of debt. P. possessed of goods to the valve of 300 l. makes a gift of them to T. in part of payment, by the name of all his Goods and Chattels, he continues in possession and imployes them as his own, C. recovers, sues a *fieri fac.* T. opposes the Sheriff in the execution of the Writ.

Resol. 1. The gift is void by statute 13 of *Eliz.* it has the marks of covin, it is generall, the continuance of possession is in the giver, the secrecy, the consignement the Writ depending, and upon trust, the conclusion that it is a deed without fraud and honesty.

2. Were the consideration, good as it ought to be, it is void, the meaning is not sincere; Note then, statutes against fraud are expounded beneficially against fraud.

The case of Fines, f. 84.

A Tenant for life remainder in Taile with fee expectant to B B. levies a fine and dyes, his issue over the Sea, proclamations passe, he re[illegible]e is unavoidable. *Res.*

Resol. 1. By death of the conusor the conusees estate is not void, although the remainder lies in grant; The grant of the Tenant in Taile is not void, but at the choice of the issue. 2. Stat. 32. *H.* 8. provides that a fine with Proclamations levied of a remainder, or reversion, shall be firme against the issue, which cannot be unlesse the estate in the fine continue.

2. Although the right of the estate Taile, because of the death of B. before the Proclamations discends to the issue; yet those being past without claim, he is barred.

3. Farther, no claim can hold up this right, it must sinke; were it not for one exception or saving in the 4 of *H.* 7. had swallowed all men and all right; but not the issue in Taile, no privies are any part of that saving: but if Tenant in Taile enfeoffe a stranger who dies, the issue being the first to whom the right discends shall have five years after the death of the feoffor; otherwise had the desseisor of Tenant in Taile levied, &c.

The purpose of the Proclamations is to distinguish such fine from the fine at the common Law; and whereas the stat. 32 *H.* 8. speakes, *The issue in Taile shall be barred after Proclamations passe*; it is not to be expounded by equity, being a statute of explanation.

4. That the issue was beyond Sea, is to no purpose to better his case, had he been at home the fine were not to be avoided.

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Vernons Case, f. 1.

B. Enfeoffes to the use of himselfe for life, remainder to his Wife for life, on condicion to performe his last will, for her jointure, and dyes, the Wife enters, agrees to it, and brings her Writ of dower.

Resol. 1. Right or Title to frank-Tenement, or inheritance, cannot be barred by collaterall satisfaction accepted, there must be release or confirmation, or some act which rises to as much; accord with satisfaction is no plea in reall actions; no recompence concludes dower at the common Law, but dower at the Church-dore and by assent of the Father, if the Wife enter: If this therefore be no joynture within 27 of *H.* 8. the Wife is to have her dower.

2. An estate limited to the Husband for life, remainder to the Wife for life, is a joynture within the sense not words of the statute; the examples there being put of a joint estate; For here is (as it must be) a competent livelyhood to her for life; it takes effect immediately after her Husbands death; and in all respects it is equally beneficiall.

3. Jointures upon condition are within the statute, if she accepts; it is competent livelyhood, and not determinable but by her own act, else it were otherwise, and like a lease for the life of another.

4. Joyn-

4. Joyntures before Marriage cannot be waived, if for part before, and another estate in satisfaction of the residue after, she waives the last estate, shee shall have that estate made before marriage and her dower too; as a horse is given indefinitely in part of a debt, barrs no part; the statute speakes, in satisfaction of dower, and not of part.

5. Notwithstanding this estate was made to the Wife upon expresse consideration, averment may be taken that it was for her Joynture; part is evicted, shee shall recover to the value, out of the Land in which she has right to have dower; but what estate soever shee had in her Jointure she shall have but for life in what she recovers; a devise cannot be averred to be for joynture, nor to be upon any other consideration then what is expressed in it; after agreement to her joynture she brings dower and recovers, her estate in the joynture is not waived, but she is estopped to claim such estate, for the time to come.

Bevils case, f. 8.

The Lord seised of fealty, distraines for homage, Tenant brings a replevin: adj. for the defendant.

1. Seisin of fealty is seisin of all services, in doing this the Tenant takes upon him to perform his services, more strong is the case of homage, that and fealty agree in many words, Therefore is seisin of homage seisin of whatsoever superior or inferior services; The seisin of these is so pretious, no distresse is thought excessive.

2. Seisin of the superior is seisin of the inferior services.

3. Seisin

3. Seisin of annuall service is seisin of all casuall services, not of other annuall services.

All this is to be meant of seisin in Law as to avowry, not actuall seisin such as is necessary in an assise; there must be seisin of part of the service for which the distresse is made, as so much Corne reserved the first yeare, after 5 l. yearly: The seisin of the Corn is the actuall seisin of the 5 l. they are one service: if rent reserved upon a mesnalty be by act of the Tenant, not of the Lord, changed into rent seck, the seisin before is enough for an assise: Returne irrepleviable is a good seisin of rent, so of dammages recovered for suite; Payment of 1. before any rent due in name of seisin is good; but it goes not for satisfaction of such part of the Rent.

Objected, the statute of 32. *H.* 8. c. 2. of limitations where it barrs the avowant if he cannot prove that himselfe, or those he claimes by, were in actuall seisin of the services within 30 yeares, by the words, *actuall seisin*, excludes seisin in Law: which was denyed; 1. The purpose of the statute, was to limit a time of seisin, not to disallow any seisin good in Law. 2. Is not to be understood of casuall services, which perhaps may not become due in 60 years; As the *formedon in discender* is out of the statute, by possibility, he that discontinued may outlive the time of limitation. Also those actions in which the seisin is not traversable are not comprehended, as Escheat, Rescous, and Cessavit. 3. If any mans action be taken away by time, which has out-run the limitation, if his entry be allowed in Law he may enter.

Actions

Actions for ſlanders f.12.

Lord *Cromwell* againſt *Denny*. Lord Cac
ons upon the ſtatute of ſlander of Peeres agai
D. the words were theſe, *it is no marvell y*
like not of me, for you like of thoſe that mai
taine ſedition againſt the Queenes proceed
ings.

Reſol. This is a generall Law, the Judges a
to take notice of it. 1. In as much as the Kin
Peers are concerned, it concernes the King
2. By the expreſſion of the ſtatute it concerne
the whole Realme; Objected, he might lik
thoſe that maintaine ſedition, not knowing the
did maintaine ſedition. To that, ſedition is
thing public; of which he ſhall not be imagine
not knowing, but it appearing by the diſcourſe
betwixt the Plaintife and Defendant, that the
words upon which the action is founded, taken
according to the matter ſubject are not action-
able, as if A. in talke of killing hares ſhould
ſay thou art a murtherer. The Plantife wa
barred.

Cutler and *Dixon* 14. To prefer ſcandalous Ar-
ticles againſt any man to the Juſtices of Peace,
to the intent he may be bound to his good be-
haviour; is in purſuance of juſtice, not acti-
onable.

Sir *R. Buckley* and *Owen Wood*. B. ſues W. for
preferring divers ſcandalous Articles againſt
him in the Star-chamber, not determinable
there; and for affirming the ſame in the Coun-
ty of S. W. trauerſes the affirmance before or
after the day in the Count.

Reſol. 1. The travers is not good, the day
in the Count is excluded. 2. No action lies
for things determinable in the Court, where the
com-

complaint is made, becauſe in courſe of Juſtice. 3. For things not determinable there, otherwiſe. For appeall in the Common Pleas no action, it is in nature of a juſt ſuit, though the Court be miſtaken; But; becauſe the words in the County out of which the action is compoſed, are not actionable, the hearers not being of judgement to perceive what was in the Bill. Judgement is againſt the Pl.

Stanhope and *Blithe*. 15. S. *has but one Manner, and that hee hath got by ſwearing, and for ſwearing, not actionable*. 1. The words are too generall. 2. It may be true, by the forſwearing of others, yet he not forſworn. Forſwearing too peremptorily of him ſhall be conſtrued in uſuall communication, not before a Judge of record; they are words of choller.

Next and *Yeomans*. *For many ground in A.* H. ſeeks my life, and if I could finde I. S. I doubt not but within two dayes to accuſe H. of felony: The firſt part is inconſiderable, he may hold Land of him and H. ſeeke his life lawfull. 2. It is too generall; the ſecond part is actionable, his life may be brought in queſtion.

Birchley f. 16. One diſcourſing with another concerning his carrying himſelfe in his Office, tells him he is a corrupt man, and known to deale corruptly. Theſe words are ſcandalous, from the cauſe of ſpeaking them, it ſhall be intended he meant in his Office, by which he ſubſiſts: otherwiſe, had not his office been the ſubject of the talk.

Stuckley and *Bulhead*. S. hides felons, and is not worthy to be a Juſtice of Peace. Action lies, it is againſt his Oath.

Weaver and *Carlden*, Not, for theſe words, Thou art detected of perjury in the Star-Chamber

Chamber, preferring the Bill is detection.

Snagg and *Gee*, Nor ſo theſe, Thou haſt killed my Wife; and ſhe is living, though falſe, they cannot indammage him of whom they are ſpoke.

Eaton and *Allen*, nor for theſe, A. has conſpired to kill me, only puniſhable in Star-chamber.

Ann Davis and *Gardiner*: the Plaintife neare her Marriage, the Defendant ſayes ſhe had a baſtard, actionable. 1. Becauſe ſhe is puniſhable by ſtatute 1. *Eliz.* if true; ſo of any naked charging with incontinence upon ſpeciall prejudice ſhown, as to call baſtard if there by any poſſibility of inheritance, elſe not; or if the party ſpeaking claim the ſame Lands.

James and *Rutleh* f. 17. Hang him he is full of the Pox, not actionable, though reduced to certainty by an *innuendo*: For in actions of ſlander the perſon muſt be certaine who is the ſubject, as to ſay, one of the ſervants of I, if the diſcourſe was of A. there *innuendo* will help, but if one ſay to another, thou art, &c, actionable. 2. The matter muſt be certaine of it ſelf, elſe the *innuendo* will not ſerve turne, as here Pox is not certaine.

Oxford and *Croſſe*, f. 18 Cuſtome of London to maintaine the action for calling whore diſallowed.

S. *Gil. Gerrard*, and *Ma. Dit kenſon*. The Defendant publiſhes a leaſe of the Plantifs Land forged by her Husband; knowing it to be forged, action is brought, ſhee traverſes the knowledge.

Reſol. 1. To ſay the Plantife has no title if the Defendant makes title, not actionable.

2. Knowledge of forgery makes it actionable.

3. The

3. The knowledge here is not traverſable.

Bitridges Caſe. M. B. is a perjurd old knave, and that appears by a ſtake parting the Land of, &c. *Reſol.* words adjectives are actionable, if they import any act committed, or ſlander a man in his profeſſion; By the words ſubſequent it is clear they were not meant of perjury before a Judge. 2. The diſcourſe was vain, witneſſe the ſtake, &c.

Barkham. f. 20. B. burnt my barn, not actionable, no felony without corne in it, the *innuendo* can do nothing.

Palmer and *Thorp.* Suite for Scandalls determinable in the Eccleſiaſticall Court muſt have three incidents. 1 It muſt concern matter ſpirituall. 2. And matter ſpirituall only. 3. It muſt not demand damages.

Copyhold caſes, f. 21.

Brown. Copyholder by licence, leaſes for years having a ſon and daughter by one venter, and a ſon by another, and dyes, the eldeſt ſon dyes before admittance, the ſiſter ſhall inherit. 1. The eſtate of the Copyholder who performes his ſervices is ſure. 2. The cuſtome has eſtabliſhed the deſcent, the Common Law guides it; by which there ſhall be poſſeſſion of the brother. 3. There is poſſeſſion of the brother before admittance, There is a diſcent in Law; he may enter and take the profits.

Rivets caſe. f. 22. Tenancy by curteſie of Copyhold not without ſpeciall cuſtome.

Beal and *Rigden*, 23. If a Copyhold may be intailed, recovery by plaint in nature of aſſiſe is diſcontinuance.

Bullock and *Dibley*, Husband ſeiſed in right of his Wife, if for life, and he ſurrender in fee,

it

it is no discontinuance nor forfeiture.

Foxton & Coulston, Discent of Copyhold take not away entry. 2. If it be customary to gran Copyholds in fee, it is within the custome t grant to A. and the heirs of his body.

Fitch & Huckley, Admittance of tenant fo life, is admittance of him in remainder, not t defeat the Lord of his fine: 2. Surrender t the use of this will, the inheritance remains i the tenant.

Clerk & Pennifathers case, 1. The Copihold h the heires before admittance: 2. The Queen i a person able by the common law. 3 He tha has any lawfull estate in the Mannor, may re-grant Copiholds which escheat, and he that ha an estate by wrong can onely admit.

F. 24. The Lord grants a Copy and dyes, hi wife shall not be endowed.

Rous & Artas, Admittances by tenant at suf-ferance bind the Lord, not grants.

Murrell & Smith, 1. The Lord by severance of the inheritance of the Mannor from the Co-pyhold, cannot destroy the estate of the Copy-holder. 2. After such severance the Copyholder cannot alien, because he cannot surrender. 3. B such severance the custome of surrender, suit o Court, and fines for alienations are gone; rents, and other customes and services, remain.

Kite & Queinton, 25. B. Copyholder surren-ders out of the Court, upon condition, to the use of A. who dyes before admittance, his heirs are admitted, the condicion omitted, B. releases and enters: 1. That admission was void, it pur-sued not the surrender, but if a condicionall sur-render be presented, the Steward omits the con-dicion, the roll may be amended. 2. The release barrs the Copyholder. *Objected*, 1. By *Littleton*

Copy-

Copyhold cannot be transferred by deed: 2. The Copyholder shall have no other Evidences but Court-rolls. *It was answered*, Release to a disseisor is void, not so to one that is in by a void admittance; in the case of disseisor the Lord loses his fine: 1. There is no customary estate upon which the release may enure, *Littleton* must be intended, if a tenant aliens by surrender he cannot alien by deed; and he that claims by surrender onely, claims not by deed or other evidence besides the surrender.

Melwich & *Luter* 26. Lessee of a Copyholder shall have an *ejectione firmæ*, 2. As *Murrels* case, if the Lord grant the inheritance of all his Copyholds to A. A. has a customary mannor with all incidents: The Lord may admit out of the Mannor, not the Steward.

Neale and *Jackson*; such grantee of the inheritance of the Copyholds may keep Courts.

Clifton & *Molineux* 27. Without custome Courts cannot be held out of the Mannor: 2 The act of the husband, not of a stranger, may forfeit the wives Copyhold.

Taverner & *Cromwell*, Many Copiholds are held of one Mannor, the forfeiture of one forfeits not the rest, be they surrendred to the use of one man, or does the Lord grant them to be held by the ancient services, the tenure is severall.

Hubbard & *Hammond*, Where fines are uncertain the Lord assesses an excessive fine, the tenant without danger may deny it: 2. He is not bound to present payment, as in cases of fines certain. 3. Severall Copyholds, the fines are to be severall. 4. No fine is due before admittance.

Westwick & *Wyer* 28. surrender to the use of

A. in

A. in fee, he is admitted with his wife, it is void as to her; so of admission upon condicion.

Bunting & Lopingwell 29. *Agnes* contracts with B. marries another, B. libells against her, she and her second husband are divorced, although the second husband is not party to the suit, yet it binds him; the Kings Courts give credit to the Judges spirituall in matters of their jurisdiction. 2. Surrender to the use of A. no estate limited, is for life, 3. notwithstanding the admission be in tail; 4. Husband may surrender to the use of the wife: 5. He that surrender dyes, presentation after is good.

Down & Hopkins, Custome to grant Copyhold for life, a grant during her widowhood within the custome: If issue be, whether the wife has Copyhold for life, evidence that she has during her widowhood is not good. The Lord may retain his Steward by paroll.

Harris & Iay 30. The custome is good, that the Steward of the Kings Mannor may grant Copyholds by voluntary admittance. Such a Steward must be created by Letters Patents, not by the Kings Receiver.

Dame Holcroft, A Steward by paroll may accept surrenders out of Court.

Shaw & Thompson, 1. The wife shall not be endowed of Copyhold without speciall custome. 2. Where such custome is, she shall have all incidents to it, as damages by stat' of *Merton* which she must recover in the Chancery, or Court of the Mannor, not at the common law.

Hoe & Taylor, Underwoods are grantable by custome, if such be the use.

French, 31. If there be lawfull interruption of the custom, the copyhold is destroyed, so that

can no more be granted by Copy: otherwise of wrongfull interruption. Copyholder accepts a lease for years of his Copyhold, the custome is destroyed, but not by accepting a lease of the Mannor.

Froyston & *Crackrood*, Copyholder cannot prescribe in his own name, if for any profit out of the Mannor, he must prescribe in the Lords name; if within the Mannor, he must say, *Within the Mannor there is such a custome.*

Mitton's case. f.32.

The King cannot grant the office of the Clerk of the County Court; the office of the Sheriff is of great trust, the King may determine it when he pleases, not abridg its incidents: he cannot determine it in part as to one Town, unlesse he constitutes a Sheriff there. The Shire Court is the Court of the sheriffe, the grant of the office of the Clerk of this Court, is incident to his office, it were dangerous to him if those rolls should be put into a strangers custody, for which he must answer as immediate officer to the Court.

Bozun's case. f.35.

Q. El. seised of the Rectory and a portion of Tithes in L. grants to two all that portion of tithes and garbes in L. with all other tithes in L. in the occupation of I.C. notwithstanding any misnaming, &c. I.C. has no tithes there, the patent is void.

Resol. 1. The pronoun *That* is not satisfied till the end of the sentence, therfore the last certainty being false, nothing passes.

2. *Portion* signifies part divided; if the King then have no other tithes there, but those which

are

are parcell of the Rectory, nothing is granted.

3. The *Non obstante* aids not: 1. Where the King may grant, and the law requires that he be better informed, the *Non obstante* makes such grant good; not where he cannot grant. 2. Where the Kings grant by force of the term is void, no *non obstante* is to purpose.

Tiringham's case. f. 36.

T. seised of house, land, medow, and pasture, &c. to which he had common in the lands of B. and C. B purchases the lands to which &c. and puts his beasts into the land of C.

Res. 1. No prescription can make that appendant which is not so of its own nature, as things corporate to corporate, or a Leet to a Church, wherefore this common being claimed to medow and pasture, was resolved to be common appurtenant; for common cannot be appendant but to lands arable, or which have bin arable; but it is not shown here that ever these lands were arable, and common is claimed to a house, medow, and pasture, where it ought to be to the land: but common may be claymed as appendant to a Mannor, yet shall be intended to be appendant to the part arable.

2. Common appendant, because it is of common right, may be apportioned, afterwards the prescription shall be speciall, and shew the apportionment: Common appurtenant is not apportionable; therefore as here it is extinct.

3. Common appendant is extinguished by unity of the possession of the whole land, in which and to which.

4. Common of vicinage must be by prescription, there the Commoners may inclose against one another.

Tenant

Tenant may at his election distrein cattell damage feasant, or gently chase them out.

Cases of Appeales. f.39.

Brooks the Appellee is convict of burglary, the Count has *burgaliter* for *burglariter*, the Appellor dyes before judgment, *Resolved*, had the Count been good, being convict at the suit of the party, he were to be discharged; the Count being insufficient he may be indicted: A theef breaks a mansion house, no body in it, it is felony.

F.40. A good plea in an indictment of murder, that he was convict of manslaughter at the suit of the party, and had his Clergy.

Young, Indictment on this manner, *That A. murdered had two wounds, one about his brest, and that he dyed of his wounds and blowes aforesaid*, quashed; the place of his brest should have bin certainly shown, where the blow was; and one of the wounds is alledged uncertainly, yet it sayes he dyed of his wounds: The better form is, if he dyed not of the first blow, he dyed of the latter. To kill the Kings officer doing his duty is murder.

Walker, f.41. Indictment was, *that he struck &c. in the left part of the belly, about the navell*; in the left part of the belly, is certain enough; the rest, abundancie.

Heydon, 1. Exception to the Indictment, it sayes, *before the Coroner in*, not of *the County*: Resp. To be intended he is Coroner of the County, the Writ to choose the Coroner is of this form. 2. The words, *in the peace of our Lord the King*, omitted: Resp. They are but words of amplification. 3. It is said, *he struck*, and *feloniously* left out: Resp. *Feloniously*, in the beginning

of the Indictment, runs through the whole. 4. The latitude and depth of the wound is not shown: Resp. because the whole joint was cut off. 5. It is said, *in the time of the felony, & murdredi*, for *murdri*: Res. *Felony* is enough, the other abundance. 6. The wound was given the 4 of *August*, and the death 19. of *December* following, yet said, time of the felony the 4. of *August*: Reso. To conclude that he committed the murder the last day, had been sufficient; as here, all is vitious and repugnant, the best form is, *that he committed &c. in forma prædicta.*

Fol. 42. The wound in one place and death in another, the appeal layes the murder where the wound was given, not good, it must be where he dyes.

Hudson & Lee, f. 43. Recovery of damages in trespasse barres in appeal of mayhem, no reason damages should be had twice.

Syer, The principall is convict, not attainted, the accessary not to be arraigned.

Blithe, Appeal against one as principall, against A. as accessary before, and B. after, the principall is found guilty of manslaughter, the accessary before is discharged, the principall allowed his Clergy, and the accessary afterward discharged.

Vaux, f 44. V. indited of poysoning, the words are, *The aforesaid N. not knowing the drink to be poysoned, took it and drank it*; this is void, it is not expressly alledged that he drank the poyson; what follows, *after the taking the said poyson*, supplyes not, it is but an argument, V. absent at the time is guilty of the murder. 3. Though V. be discharged upon this insufficient indictment, he may be again indicted.

Wroe & Wiggs, f. 45. after the appeal purchased

chased, and before the return of it, W. is convict before the Coroner of the Hostell, and the Coroner of the County, and has his Clergy.

1. Heretofore convict, and Clergy had, is a good bar in appeal, without burning in the hand. 2. The Coroner of the Hostell has a distinct jurisdiction from the Coroner of the County, within the Verge. 3. The indictment is imperfect, it appears not that the place where the wound was given is within the Verge. 4. The first indictment not being sufficient, he shall be arraigned anew. 5. *Vide Heydons case.* 6. Conviction and Clergy where the indictment is sufficient, the appeal depending, bars.

Wait, f. 47. Seven appeals of the death of one, all shall abate but the first.

F. 48. Indictment of forcible entry quashed; 1. No mention what day the Sessions were held; 2. The stat' is misrecited: It needed not to be recited.

Andrew Ognel's case. f. 48.

W. possessed for 30. years of C. consisting of H. and other parcels, dyes, his Executors lease all but H. for 23. years to B. and H. to W. F. the residue to both of them, he in reversion grants rent charge out of C. sometime in the tenure of W. and then in the tenure of B. or his assignes; the rent is behind, the term expires, he in reversion makes feoffment, the feoffee leases at will, the executors of the grantee distrain.

Resolved. In speciall cases debt lyes for arrears of annuity not determined, as a Person grantee of annuity dyes, or surrenders, no debt lyes for rent of franktenement till determination, so then the arrears incurred in the life of the grantee are lost at the common law.

2. H. is not charged with the rent, becauſe not in the occupation of B. though he has the reſidue.

3. Executors may diſtrain upon the poſſeſſion of the leſſee at will, for the whole arrears, by the ſtat' of 32. H. 8. *Objected*, The ſtat' ſayes *They ſhall diſtrain ſo long as the lands be in the poſſeſſion of him that ought to pay the rent immediately or any other by or from him*; but leſſee at will claims not onely by the grantor, but by the feoffee, more ſtrongly becauſe the ſtat' reſtrains the common law: *Anſwered*, when any thing is due, and remedileſſe, ſtatutes which provide remedies ſhall be conſtrued favourably; and though the tenant at will claims not onely by the grantor, yet he claims from, *viz.* under him; but where the teſtator could not diſtrain, the executors ſhall not. By this ſtat' the husband after the wives death may diſtrain for arrears before the coverture. Adj. for the executors.

Rawlin's caſe. f. 52.

C. poſſeſſed of a houſe for 30 yeas, (except the ſtable leaſed by him to W. for two years) grants his whole intereſt to R. and demiſes the ſtable to W. for ſixe years after the end of the two years, R. redemiſes to C. for 21. years on condicion, C. demiſes the ſtable to R. the condicion is broke, R. enters not in the ſtable, nor did W. ever atturn, R. enters.

Reſ. 1. The ſpeciall verdict was mended by the note, three terms after the entry.

2. The condicion was to pay 5 li. fine and the rent reſerved, therefore being intire, the ſuſpenſion of part is ſuſpenſion of the whole.

3. Leſſor on condicion accepts a demiſe of part, and enters not, the condicion is ſuſpended.

4. The

4. The leaſe of C. to W. for ſix years, takes effect by way of concluſion, and when R. redemiſes to C. and accepts a leaſe of the ſtable from from him, R. is alſo concluded, the leaſe of R. takes effect as a future intereſt, becauſe atturnment is wanting, therefore it ſuſpends not the condicion.

5. Though the parties plead not eſtoppels, if they be found by the Jury, the Court ſhall give judgment of them according to law, as if they had been pleaded.

6. Leſſee for 20. years leaſes for two, and grants his intereſt to another, this without atturnment is the grant of a future intereſt; with atturnment, of the reverſion.

7. Leſſee for 20 yeares leaſes part for two years, and after the reſidue to a third man for 10 years, ſo that it paſſes as a future intereſt for part, and in poſſeſſion for another part, one rent ſhall iſſue.

Note, eſtoppels continue but the time of the eſtate to which they are annexed, A. accepts a leaſe for years of his own land, the eſtoppell ends with the leaſe.

The caſe of the Wardens and Company of Sadlers. f. 54.

M. demiſes to the Wardens &c. T. diſſeiſes them, and dyes without heir, office is found for the King, they bring *Monſtrance de droit.*

In all caſes at common law, when the King was ſeiſed by matter of record, he that had right was put to his petition, unleſſe the parties title be found in the record, then the *Monſtrance de droit* is permitted, but no traverſe: as land is given to the King on condicion, if the perfor-

mance of the condicion appear of record: And if the King grants over the land, he that had right was to sue by petition, if he were to goe that way, when the land was in the Kings hands, Chattell or franktenement made no difference; but where the King was put to his *scire facias* upon the Record, the party upon the *scire fac'* might traverse the Record. Then comes the stat' 34. E. 3. c. 14. which allows a traverse where lands are seised into the Kings hands, because of Wardship or alienation without licence, by office or vertue of Writ; the stat' of 36. E. 3. is more ample, that allowes a traverse, where offices are found by vertue of office also, and is generall, for what cause soever; where the King seises without cause, it is out of the statute, there is no cause which is traversable.

Objected, the extent of the stat' is only where the party is dispossessed by office, but in this case the Company of Sadlers were put to their petition before the office, for by the death of T. the land was in the King.

Answered, Where any man is put to his reall action against a common person, he is put to his petition against the King, and not otherwise: In the case here, had any other Lord entred by escheat, he that has right might enter, therefore shall they not be constrained to petition the King; admitting they were to petition before office, after, they shall enjoy the benefit of the statute, for it refers to the death; and were not they outed by office, those other words of the statute, *And if no man claims the land*, will aid them.

Where the Kings title accrued by judiciall Record, and he grants the land over, he that had right at Common Law was to petition, not

not in Ministeriall, or conveiances of Record.

Forse and Hemblings case. f.60.

A. devises, then takes the devisee to Husband, she revokes the devise and dyes, the Husband discontinues, the heire of the Wife enters and leases to the Plaintife, who recovers.

Argued for the Defendant, the devise being to the advantage of the Husband, shall not be countermanded by the Marriage, as a woman sole grants her reversion, attornment is after Marriage. 2. It is done before coverture, so no coercion of the Husband can be pretended. 3. If the Marriage be no countermand, the countermand by paroll is worth nothing, the Wifes will is not her own; so it is irrevokable during the coverture: as a man in's wits devises, growes lunatick.

Res. It is against the nature of a will to be irrevocable, rather then which shall be, the Marriage revokes it; otherwise it were very mischeivous to women, that their wills should be in force whether they will or no; and it is not fit to leave it in the Wives choyce to countermand, because of the compulsion of the Husband is to be feared.

Herlakendens case. f. 62.

Earle of O. leases his Park to three, and grants the Trees to the same lessees, who lease part to B. under whom the Plantife claimes for two yeares, and sells the Trees to the Defendant.

Resol. 1. Lessee for years has but a speciall property in the Trees, for the time they are annexed to the Land; not after severance by

himself or others, though his lease be without impeachment of wast.

2. If the house fals, the lessee has speciall interest in the great Timber, to rebuild it, but if he throwes it down, the interest is in the lessor.

3. The lessee shall have the dead wood, and their windfalls.

4. The first lessees interest in the Trees and Land is severall, it passes not with the Land in their lease. 1. It is not equall in both. 2. One of the first lessees granted over his interest, so they are joint Tenants of the Trees, and Tenants in common of the Land.

Fulwoods case, f. 64.

C. seised of certaine houses in fee, acknowledges a recognisance for Orphanage money to the Chamberlaine of L. for 250 l. and after, another of 200 l. to Sir T. R. who sues execution, the liberate is not returned, the Chamberlain of L. sues execution by elegit C. dies, his Wife has those houses assigned for dower, the Chamberlaine, and Sir T. R. assigne to the defendant and the heire of C. to the plaintife.

Resol. 1. The Chamberlaine of L. though a sole Corporation by custome is inabled to take bond to him and his successors, and this goes not to his executors.

2. The statute of Elegit, which appoints the Sheriffe to do execution, by equity extends to the Sergeant of the Mace.

3. Two statutes acknowledged, the last is extended, if the first conusee sues execution and the Sheriffe executes it, it is good without

out *ſcire fac.* otherwiſe if he return, that the ſecond is extended.

4. The jury finds the reconuſance acknowledged before the Recorder of L. and the Major of the ſtaple, it is to be intended a reconuſance upon the ſtat.

5. Though by the Elegit and dower, a greater eſtate is evicted out of Sir T. R. then himſef had, he is not to put his *ſcire. fa.* upon the ſtat. 32 *H.* 8 c. 5. that is given there, when the conuſee is without remedy; here hee may hold over.

6. R. has execution of foure houſes for 13 years, and the firſt of two of the ſame houſes, yet has R. a certaine intereſt in the two laſt houſes which he may grant over, he ſhall hold two for 15 years (the time of the firſt extent) and all the foure after, till his execution be ſatisfied; ſatisfaction in the meane time by caſualty of profits of the two houſes ſhall not be imagined.

7. Though the liberate be not returned, the execution is well made, otherwiſe in Elegit where inquiſition is taken: there it muſt be returned, becauſe the Court may judge the ſufficiency of the Inquiſition.

8. Execution upon ſtat. by liberate is ſatisfied by effluxion of time, the conuſor cannot enter without *ſcire fac'* the conuſee is to have damages, and coſts, not ſo in Elegit where are no damages.

Hyndes caſe, f. 70.

Leſſor for years bargains and ſells, and levies a fine to the bargainee, the indenture is inrolled the ſame Term after the fine levied, bargainee ſues for waſt: Adj. for the Defendant.

Resol. 1. The conusee is in by the fine, and before inrollement, the inrollement after devests not the estate out of him, by which he was in the Per, to vest another estate in him, by which he should be in in the Post. 2. The fine is by common Law, the inrollement by stat. therefore shall the common Law be preferred; and the inrollement has relation to the delivery onely to avoid incumbrances. 3. The stat. 27. *H.* 8. speakes of bargain and sale onely.

2. Though the fine and inrollment are both in the same Term, yet may it be averred the fine was first; Objected, The Term is but one day in Law, and the inrollement shall be intended the first day. 2. If this averment be suffered, the Country shall try Records. To the 1. The inrollement shall be supposed the first day of the Term, till the contrary appeare as it doth here. 2. The Jurors shall not try the validity of the record, but circumstances which may consist with it; this they may do well enough.

Opinion of some Justices, if fine and inrollement be both at one time, the grantee may choose by which he will claim.

Boroughs case f. 72.

The Queen leases reserving rent payable at the Eschequer, or in the hands of her bailifs or receivours; and grants the reversion over,

Resol. 1. If the rent be reserved out of the Land, the demand is to be where the payment is appointed.

2. The Queen shall enter for condition of not payment without demand, shee shall not attend upon a subject; this prerogative is personall,

sonall, the grantee shall not take advantage of it.

3. In this case the demand must be made upon the Land, as if no place had been limited; for of common right the Kings rent is to be paid at the Exchequer: And the expression of those things which are tacitely there, operates nothing.

Palmers case. f. 74.

If the Sheriffe in execution of a *fieri fac.* sels the Term, and misrecites the date, it is void; unlesse he sells the whole interest of the party; but a sale without any recitall at all is good: but in *elegit* (as this case was) he must recite what years are behind, because the conusor is to have what is left, after the execution satisfied.

Hollands case, f. 75.

Resol. 1. Before the 21. of *Hen.* 8. c. 13. A. accepts a benefice without Cure, having another, the first is void; but not by common Law, but papall constitution; therefore laps incurres not without notice; yet the patron may take notice and present if he will: but if the Church be above 8 l. by year in value, this is avoydance by *Parliament*, to which every man is party, and he must take notice at his own perill.

2. The stat. is generall, the Court of duty is to take notice of it, because it concernes the whole Clergy, otherwise if onely Bishops or Deanes; though the matter be spirituall, it is not to purpose if the persons be generall, as the stat. of appeales, and if persons and matter be speciall, yet if it concerne the King, the Court shall take notice of it.

The

The case of Corporations f. 77.

Corporations who have power by Charter to choose Officers for the commonalty, may do it by a selected number called the common councell; They may make by-lawes, and it shall be intended this use began by Law.

Digbies case f. 78.

M. by whom the Defendant claimes person of H. above the value of 8 l. is presented by the Queen to S. above the value of 8 l. who after institution, and before induction becomes Chaplaine to the Lady B. and procures a dispensation, which is confirmed by the Queen, who presents W. by whom the Plaintife claimes. Resolved for the Plantife, the Church is full against all but the King by institution, M has by it *curam animarum*, though he has not the temporalities till induction; so were he but instituted to the first benefice and should accept another; the patron needs not take notice of the laps till induction, and here the dispensation is to receive and retaine; but he has received by institution; therefore is the dispensation void.

Nokes case, f. 80.

I. leases to N. by the words *grant and demise*, and covenants that the lessee shall injoy without eviction, by the lessor or any claming by him and is bound to performe Covenants: A. recovers by title paramount, N. brings an action of debt

Resol. 1. The lessee may have a Writ of Covenant upon the word *grant and demise.*

2. The

2. The Bond is forfeited by breach of the Covenant in Law.

3. Although the recovery be by verdit, the Plaintife muſt ſhow that it was by title paramount.

4. The expreſſe Covenant in the caſe qualifies the generall Covenant in Law; ſo that the recovery by title paramount is no breach of it, but expreſſe warranty takes not away warranty in Law. Vide 175. Vaughan. 122. 126. 127.

Sir *Andrew Corbets caſes, f.* 81.

Sir A. C. deviſes his Land to R. C. till 800 l. be raiſed for the perferment of his daughters, and dyes C. his haire conceales the will, enters and dyes, R. C. ſhall have allowance, for the time that the will was concealed.

Reſol 1. The words untill 800 l be levyed are to be intended, ſhall or may be levied; otherwiſe he in reverſion may be excluded.

2. If he in reverſion enter upon him, who has the Land, to the intent to levy the ſum, he may enter, or bring his action, the time he in reverſion is in, ſhall not be accounted parcell of the time, otherwiſe if he ſurrender to the other upon condition, and the condition is broke; this is his own act.

3. Had a ſtranger enterd as here, the deviſee was bound to take notice of the will at his own perill; Gardian in Knights ſervice cannot out the leſſee for years, if he could, the leſſee ſhould not hold over in the time of the heir, becauſe the eſtate, &c. is determinable upon a certaine time limited.

South-

Southcotes case f. 83.

The bailor shall have detinue against the baliee upon generall bilement, if the goods be stolne; not upon speciall, as if the bailee undertakes to keepe them as his own proper goods; he that bailes the Chest, keeps the key, if the other be robbed it is a good plea; Goods are pawned, it is a good plea: for him that tooke them, that he is robbed, unlesse he denied them to be redeemed.

Luttrells case f. 86.

C. brings an action upon the case against L. and counts that he was seised of two fulling-Milles, to which he prescribes to have a great part of the brook, and that he turned them into corne Mills, and the Defendant diverted the water. The Defendant pleads the generall issue: verdict and judgement for the Plaintife, the Defendant brings error. Argued for the Plaintife, that by change of the Mills the prescription is gone, as he that has estovers for his parler, makes it his kitchin; and perhaps the Plaintife may have Corne Mills, so the change must be to his great losse: if the Mills fall and the party rebuild them, the prescription remaines, otherwise if himselfe throwes them down.

Resolved, the prescription remaines, he may prescribe to his Mills generally, without showing the nature of them; They are demanded in a precipe by the generall name of Mills; for though their quality alters, the substance continues, and it is to be intended, the watercourse was before he built the Mills, and that without this he had not built them. So he that has light to a window in his parler, after converts

verts it to a hall, may prescribe to have light to that part of his house. He that has common of estovers, may alter his house, if he prejudices no body else: so a Corporation prescribes, and their name is changed; and though the houses fall, the prescription stands upon the most perdurable part, *viz.* the Land. A. holds by rent for castlegard, the Castle is ruinated, the rent remaines, not so were the Tenure by castlegard. To the objection, that the quantity of the water is not shown, it is an impossibility, not to be forced upon him.

Druryes case, f,89.

A Countesse widow retaines three Chaplaines, the last retained is not capable of a dispensation.

Resol. 1. The stat. is executed by the retaining. 2. And the retaining of the third devests not the capacity which was in the two first; had it been all at one time, the first promoted were to be preferred, their right was equall.

2. If the two first dye, the third cannot be capable of a dispensation without a new retaining; he was retained at the common Law: as the son and heire of a Baron retaines a Chaplaine in the life time of his Father, who dyes; this stat' is to be construed strictly, so that a Baron Warden of the Cinque ports shall retaine no more then before; and if a Baron retaines two, who are advanced, he cannot discharge them and take others during their lives.

Mo.433. mc. cont. *Slades case f.92.* v Mo 691. 711.

Action of the Case is maintainable for mony due upon the sale of Corne.

Object. 1. Not, the Plantife may have his action

action of debt. 2. The subject shall be ousted waging his Law, which is his birthright.

Resolved, It is at the election of the Plaintife to bring this action, or that of debt. 1. For the great number of presidents. 2. And judgements in the point. 3. Every contract executory justly implyes an assumpsit. 4. Recovery in action upon the case barres in debt. 5. It is the more speedy action, for if the payment be at severall dayes, no debt lies till the last, this lies upon the first breach; it is a formed action in the Register, *fol.* 97, 98. 100. 103. it appears it lies where debt may be brought. This way the debtor may be outed of his Law, and the debt forfeited to the King; Also there is no waiger, &c. in a *Quo minus*.

Adams and Lamberts case. f. 104.

Resol. Upon consideration of the stat. 1. *E.* 6. c. 14. 1. That if A. devise to any of his kinred to superstitious uses, and though he has limited them to pay certaine sums of money to those uses, yet are those Lands given to the King. No other consideration shall be supposed, but that which they in those times thought to be the service of God. This was the most worthy consideration and reason, for which the devise was made to friends; more trust was imposed in these then in others, therefore were these picked out, and therefore the persons are not to be regarded.

2. Devise of an estate for life or in Taile, is within the stat. by equity, though it sayes, *To have continuance for ever*, the intent of the stat. was to extinguish those uses, it regards not the time of their continuance. 2. Estates Taile may continue

continue for ever, and this was the intent of the deviſor that the uſes ſhould continue for ever; For the heire when it is come to him is to do as much, without this conſtruction the ſtat. would be eluded.

3. The ſtat. wills that Lands aſſigned for the finding of a Prieſt, &c. belong to the King, Then to give lands on condicion to find a Prieſt, muſt be within the ſtat. as more compulſary then the other.

4. The whole Land was given to the King: but not by the firſt branch; that extends only to lawfull chantries, or ſuch as have the countenance of a lawfull beginning, not to thoſe that want the colour of ſuch lawfull beginning; as where the Popes licence layes the firſt ſtone: this is a chantry without colour of a lawfull foundation: ſo where the guift is to finde a chantry without a Corporation, this is out of that branch. Nor by the ſecond branch, that gives the Lands belonging to ſuch Colledges to the King, without which only the ſcituations had bin his. By the third branch, which reaches to the finding a Prieſt without Corporation. *It was ſaid that the Land was not given to the finding a Prieſt*, only a penſion was appointed him out of it; and the ſtat. ſpeakes thus, *The King ſhall have it in as large, &c. as the Prieſt had*; then that a good uſe was limited, 6 d. weekly to ſix poor men; and though it be added, To pray, &c. this is not prohibited, for none but publick Prayers are within the ſtat. Anſwered, with theſe differences. 1. If 20 l. be given yearly to find a Prieſt, though his ſhare is to be but 10 l. by year, all is given to the King; the reſt ſhall be intended to find neceſſaries; otherwiſe if a condicion were fixed to the gift of 10 l. the year, there

there the King shall not have more then the 10 l. Secondly. 20 l. the year assigned, 10 l. to find a Priest, and the other 10 l. to the poore, the same; were it generally to find, &c. and for maintenance of poor men, without limitation what the Priest shall have, the King must have the Land or nothing. 3. 20 l. Land, &c. for the salary of a Priest 10 l. some other necessaries are to be found in certaine, a good use limited over; the King shall not have more then 10 l. A good use in certaine, shall be preferred before a superstitious use in certaine, if nothing be limited in certaine to the Priest the King has all. 4. If only a stipend be limited, no more but the stipend. 5. After the sum to the Priest, uses follow, not forbidden, but depending upon the superstitious uses; nothing shall be preserved. 6. So there be what certainty there can be, if they be all superstitious; *To the words in as large, &c.* They refer to the 1. 2 and 4. Branches, not to the third, else the King shall never have the Land it selfe, which was never limited to the Priest, and though the Prayers were to be made out of the Church, it is within the stat. the words *Church or Chappell extend to Lamps, and Lights not to Prayers*; it sayes anniversary or like thing, and this is like thing. In the barr Case, These words, *That his friends should have the residue of the profits of the Land*, had saved the Land.

Actons case 117.

M. a noble woman retaines a Chaplaine, who purchases a dispensation, she marries, he is preferred to another Benefice, his first is not void.

Object. The stat. speakes *of Dutchesses, &c.* being

being widowes, or married under the degree of a Baron may have, &c. M. here is out of the ſtat. without any miſchief to her, her Husbands Chaplaines may ſerve her; It is not enough to be within the ſtat. the time of retaining, unleſſe he be within it too at the time of the promotion. The retaining determines by attainder of an Earle.

Anſwered, all that the ſtat. requires is that the time of retaining ſhe be noble, married under the degree of a Baron, or a widow; and that ſhe be noble at the time of promotion, in this caſe marrying a Baron, they ſhall have their ſeverall Chaplaines. The proviſion that enables Nobles women which marry ignoble Husbands to retaine, was added, becauſe ſuch women were ignoble in Law, and without that proviſion out of the ſtat. The Baron dyes, his qualified Chaplaine ſhall keepe both his benefices, but he is puniſhable for non-reſidence without a *non-obſtante* ſued.

Dumpors caſe f. 119.

Leaſe on condition, that the leſſee, or his aſſignes alien not without licence, he aliens with licence to one that aliens without; no breach of condicion.

Reſol. 1. The firſt alienation aboliſhed the condic. ſo leaſe upon condicion to three, one aliens with licence, the leſſor cannot apportion the condic. it muſt be done either by act in Law, or wrong of the leſſee.

2. The ſtat. 13 *El.* 10. 18 *El.* concerning leaſes by Eccleſiaſticks are generall.

Buſtards caſe 121.

D. and his Wife joynt Tenants for life to the

the heires of D. this Land is exchanged for other Land by one that claimes under D. only, D. dyes, his Wife enters, the Plaintife re-enters in his own Land, the Def. enters, the Pl. brings Trespasse.

Resol. 1. The term *Excambium* implies waranty, and a condicion; which only runs in privity, onely the Land exchanged shall be recovered in value, as in *Partition*

2. Eviction of any part defeats the whole Exchange, If the party will enter, for if he vouches he shall recover according to the rate in partition only so much as make the parts equall; The Wife of the son is indowed, the Wife of the Father recovers against her, if the son was in by discent, she shall recover in value, but the third part of the two parts, if in by purchase, the third of the whole.

3. Eviction of the particular estate in part defeates the exchange, but if D. by indenture exchange a reversion by name of the possession of the Land for Land, though the other be deceived he is without remedy; he has all that can passe by the exchange.

4. The notice the Pl. may have of the right of the Wife is not to purpose; that might be the reason that he purchased by way of exchange. v. R. f. 60.

Beverlies Case, of Non compos mentis.

S. not of whole mind is bound in 1000 l. to B. he sues for reliefe in the Court of Requests, B. brings a Prohibition.

Resol. 1. Every act done by such Non compos, who is not himselfe, if it bee not of record

record, is avoidable, not by himself, but by his privies in bloud, as by his heir; or in representation, as by his executor; by no others.

2. This being a principle in Law, no Court of justice can releeve any man.

Non compos enfeoffs by his owne hands, it is avoidable, by atturney void against all but himself; in the last his heire shall be in ward, not in the first.

The *Laches*, or negligence, of *non compos mentis*, bars his entry, not his right.

The King may avoid all acts of *non compos* by office and seilure, and he cannot alien after: The King is to have the custody of the Idiot, and the provision of *non compos*.

Lib. V.

Cawdry's case.

Of the Kings Ecclesiasticall Power.

C. Person of S. preaches schismatically against the Book of Common Prayer, is deprived by the Bishop of L. with the assent &c. upon the stat' 1. *Eliz.* c. 1, & 2. This is found by the Jury.

Resol. 1. Against the two first objections on the part of the pl', the Act for unity of Common Prayer is in affirmative, and cannot abrogate the 1. of *El.*

2. For jurisdiction Ecclesiasticall, without words negative. 3. The jurisdictions Ecclesiasticall

sticall and Temporall consist well together, their proceedings are severall, so are their ends: The proviso in the statute expresly saves the jurisdiction of the Bishop, and therefore more strongly are the high Commissiioners provided for, authorised by another Act in the same Parliament. The deprivation of C. for the first offence is just. 3. The sentence of the Bishop by agreement of his Colleagues is to be allowed by our Law, it is formall. 4. The Commissioners are to be presumed subjects born, *donec &c.* 2. The stat' of 1. *El.* for jurisdiction Ecclesiasticall is onely declaratory, *For the King being an absolute Monarch*, and the *Royall head of the body politick*, has full power to render justice to his subjects in all causes Ecclesiasticall & temporal; and although he may derive his Ecclesiasticall law from any other, yet it being received here, may fitly be stiled, *The Kings Ecclesiasticall Law of England.* This is plain by numerous presidents in all ages, See the book at large fol. 9, 10, 11, 12, 13, 14, &c. The King is a mixt person with the Priest. Kings are annointed with holy oyle, and capable of spirituall jurisdiction.

Such Canons, Synods, &c. as are not repugnant to the law, or prerogative of the King, are in force. Though the processe in Courts Ecclesiasticall are in the name of the Bishops, they are the Kings Courts, as the Leet is, &c.

Clayton's case, f. 1.

Indenture of demise bears date the 26. of *May To have &c.* for three years from henceforth, it is delivered at four of the clock in the afternoon the 2. of *June.*

Resolved. 1. *From henceforth* shall have relation to the

the delivery, not the date; it is the delivery makes the deed speak.

2. Though the delivery was in the evening, the whole day must be reputed part of the lease, to avoid fractions.

3. Lease from the making hereof, or from henceforth, the day of the date or delivery shall be taken inclusively, not so if from the day of the date.

Elmer's case. f. 2. mo 253.

1. *Resol. Stat'* 1. *El.* is a private Act, and must be pleaded.

2. A Bishop outs his lessee for years, and leases for three lives, it is void: 1. The stat' gives him power to lease for 21. years, or three lives, this were a way to do both. 2. The lessee for three lives should have the rent reserved upon the lease for years, and pay nothing to the Bishop till the term ends; so hospitality must decay in the mean time: And whereas the stat' provides, that the old lease be surrendred, before the making the new, an illusory surrender upon condicion will not serve turn.

Jewel's case. f. 3.

Lease of a Fair, reserving Rent, is not within the stat' 1. *El.* for though rent be due because of the contract, it is not incident to the reversion; it is without remedy by assise or distresse.

Lord Mountjoy's case. mo 195.

Estate tail created by Parliament in a Manor, which consists of free rents, copyholds, and other casuall profits, it is enacted, that all acts which they that are seised by force of the said tail shall doe, to the prejudice of their issue, &c.

if

if not for jointures, &c. shall be void. The donor leases the whole Mannor and an Acre of waste reserving rent at two dayes, where the demesne onely were usually leased, and the rent reserved at four dayes: this lease is void by the same statute.

Res. 1. Where any stat' makes such leases void, it is against the lessor, not the issue.

2. The lease is void in respect of the acre of waste not leased before, and the rent being intirely reserved, cannot be said to be the true and ancient rent.

3. By lease of the Mannor the Copyhold lands are leased, and after death or forfeiture of the Copyholder, the rent shall issue out of those lands which were never charged before, but by reservation upon admittance.

4. The reservation at two dayes, where the use was at four, makes it void; more beneficial that it should be at four. *Contr.* 1 *Just* 44 b

5. The reservation of silver in stead of gold had made it nought, so had part of the ferm bin leased, or two fermes in one demise; the reservation of eight bushels of Corn, for one Quarter, is the same thing: A parcener may lease her moity, reserving rent as for so much, it is by act in law.

6. No apportioning of rent can be in this case, casuall profits cannot be reduced to a certain value; might any apportioning be, the lease could not be good; the lessor has not pursued the power given him by the stat'.

Justice Windham's case.

A. leases S. for 10. years, and C. for 20. and both to another for 40. years after the end of the said severall demises, ten years passe, the last lessee

lessee enters in S. and being thrown out, brings trespasse, and recovers. For the joint words shall be taken respectively, and the lease shall begin severally, upon severall determinations of the said severall leases.

Joint words shall be taken severally: 1. In respect of the generall interest of the grantors, as if two Tenants in common grant a rent charge: 2. In respect of the grantees, as a joint warranty to two severall tenants: 3. In respect the grant cannot begin at the same time, as a remainder is limited to the right heirs of I S. and I.N. 5. Because of the matter subject, as a rent is granted to two parceners upon equality of partition. 6. That the thing may be of validity.

Brudnell's case. f. 9.

Administrator during the minority of foure, after the age of one, brings an action of debt, and recovers, his executors sue execution, and outlaw the def. he brings error.

Error 1. By the age of one, the interest of the Administrator is determined.

Quære, If an estate be limited to A. for the life of two, or if B. and C. live so long, one dyes, A. shall hold during the life of the survivor, this was a limitation: otherwise in a condicion, as a lease for 100 years if B. and C. live so long; or in a collaterall determination of an estate, as during the time that B. and C. shall be of the inner Temple.

2. The Executor of such Administrator shall not sue execution, he is not chargable with the debts of the first Testator: The outlawry therefore reverst.

Henstrades case. f. 10.

A woman lessor or lessee at will, marries, this determines not the will, it might prejudice the husband if it should; so one of the lessors or lessees dyes, in case of such jointenants there is no survivor, but the other shall pay the whole rent.

Ives case. f. 11.

I. leases a Mannor to S. for 30. years, except the wood and underwood growing upon it, which he leases to him after for 62 years without impeachment of wast, then he leases the Mannor to him for 30 after the expiration of the first 30: the 30 years expire, S. wasts, I. sues wast.

Resol. 1. By exception of wood and underwood the soyle is excepted, the words *growing &c.* are surplusage.

2. The wood remains parcell of the Mannor, because the lessor has the intire frankt enement, otherwise were the lease for life with such exception; so of a lease of a Mannor except the advowson for life, the advowson is in grosse for life; a lease of the advowson for life, the advowson is appendant.

3. By acceptance of the third lease the two former leases are surrendred.

Saunders case. f. 12.

Res. 1. A lease of land in which is a Mine open, it passes, 2. Not, if it be not open, 3. Unless the lease be of the land, with all the Mines; 4. Land leased in which is a Mine hidden, the lessee opens it and assignes over the estate, the assignee cannot digge the Mine: 5. Lessee assigns

signes his term, except the Mine, Trees, or Clay, it is void.

Lessee devises his term, his executors wast, and assent to the devise, wast lyes against them in the *tenuit*; so the assignee of a term on condicion wasts, the grantor enters for the condicion broken, wast in the *tenuit* lyes.

Rosses case. f. 13.

Lease to A. and his assignees for life, and for the lives of B. and C. is a lease for three lives.

Countesse of Salop's case.

A house leased at will is burnt by negligence of the lessee, the lessor brings her action of the case, it does not lye; trespasse does, for voluntary wast, that determines the Will; so does an action upon the Case for breach of confidence, but there was no confidence here.

Case of Ecclesiasticall persons. f. 14.

Persons spirituall are restrained by stat' 13 *El.* to make leases to the Queen, in other form then what is prescribed there, 1. Because the Queen shall not take from him that is not able to grant: 2. The stat' 1. *El.* has a speciall provision, that Bishops may lease &c. to the Queen. 3. Because the stat' is to suppresse wrong, and prevent the decay of Religion: 4. The Queen shall not be made an instrument to defeat a stat' framed for the publike good, and this stat' is construed in support of the Church: recovery in annuity by Covin against a Person in action tryed is void, by force of this stat', but a confirmacion after this stat' of a grant before, is good.

Spencers case. 16

Lessee for 21. years covenants for himself his executors and administrators, that he, his executors, administrators, or assignes, will build a brick wall, he assignes his term, the lessor brings an action of Covenant against the assignee.

Res. 1. When the covenant extends to a thing in being, parcell of the demise, as to repaire houses, this binds the assignee, because annexed to the demise; otherwise if it were of a thing not in being, there he must be named, else he is not bound.

2. When a new things is to be done upon the land, as here, the assignee named is bound, not, if it be to be done upon the land of the lessor or otherwise.

3. Personall things demised, no covenant annexed to them binds the assignee, though named, there is no privity betwixt him and the lessor, as in the case of land.

4. Feoffee by *dedi* enfeoffs, the second feoffee shall not take advantage of the warranty in law; otherwise of covenant in law, in case of the lessee of lessee by the word *concessi*.

5. He that comes in in the *Post* shall not vouch, but he may take advantage of a covenant in law, or deed upon a lease for years.

6. Lessee covenants to repair houses, it runs with the land, and binds all assignees.

7. Assignee of assignee, or his executor, so the assignee of the executor of the assignee, shall bring the action of covenant; the heire of the assignee, and the assignee of the heir shall vouch.

Slingsby's case. f. 18.

A. covenants with two and *cum quolibet eorum*, they

they cannot sue severally, unless their interest be several, their interest and the covenant must accord; therefore one cannot be bound to many jointly and severally; Authority may be given in this manner, not interest.

Roswel's case. f. 19.

Bargainor of land covenants to make such assurance to the bargainee as his Councel shall devise, the bargainee (though learned in the law) cannot devise.

Higgenbottom's case. 19.

Person of L. undertakes to S. to make such estate in the Rectory, as the Councell of S. shall devise, the counsell must be given to S. and he must give notice of it to the Person.

Stile's case. f. 20.

A deed with the words, *This Indenture*, is not indented, no Indenture.

Sir *Anthony Maines case.*

M. leases for 21. years unto S. and is bound to make a new lease to S. upon surrender of the old, he leases to another for 8. years by fine, S. brings an action of debt.

Resolved. 1. Though the lessee were to doe the first act, yet is the obligacion forfeit, M. has disabled himself to accept it; as he that binds himself to enfeoffe A. before such a Feast, enfeoffs B. before that Feast, though he re-purchases, his bond is not to be saved, for he was once disabled.

2. Covenantor to enfeoffe A. enfeoffs B. B. need not request before his action.

3. Should the lease by fine enure as a future

intereſt, ſo that M. might accept a ſurrender, yet M. thus diſabled, the ſurrender cannot produce the effect it ſhould do, *viz.* the new leaſe.

Laughter's caſe. f. 21.

Where an obligacion is in the disjunctive, both parts poſſible at the time of the delivery, one becomes impoſſible by the act of God, no forfeiture.

Halling's caſe, f. 22.

Covenant with C. to make him an eſtate in fee, at the coſts of C. the Covenantor muſt begin by advertiſing C. the manner of the aſſurance, that he may know what ſum will be neceſſary.

Mathewſons caſe f. 22.

7. covenant ſeverally in one deed, Action againſt one, he pleads the ſeal of another broke off. *Reſ.* for the plaintiff, that avoids the deed but to him: Otherwiſe if the deed were joint.

Lamb's caſe. f. 23.

Condicion to make ſuch releaſe to the obligee, as the Judge of the Prerogative ſhall deviſe; he deviſes none, the obligor took upon him he ſhould, forfeiture.

Broughton's caſe. f. 24.

The principall binds himſelf to ſave the ſurety harmleſſe, for all ſuits, quarrels, and demands, &c. touching the bond: at the day the ſurety payes the debt, in default of the principall, and recovers upon the Counter-bond; payment is harme.

Dea

Dean and Chapt. of Windsors case.

Covenant to repair houses, not naming the assignee, binds him: 1. It is of a thing upon the land: 2. And to be supposed, therefore the rent is the lesse. 3. f. 100.

Sir *Tho. Palmers case.* 24.

P. sels 600 Coards of wood to C. to be taken by assignment of P. he sels 400 to M. to be taken at the election of M. C. assignes to B. P. sets out the 600 Coards, B. cuts them, M. takes them away, B. recovers upon his action of the case.

Res. 1. C. has such interest as he may assign.

2. Which admitting not to be so, M. cannot take the wood cut by B. nor by any stranger, he must take his share out of that is left.

Earl of Rutlands case. f. 25.

Earl of *Rutland* limits the use of a fine subsequent, to himself, his wife, and the heires of the Earl; and by another Indenture, to himself in tail, saying it should be to his wife for her joynture.

Res. 1. If the first agreement by Indenture agrees with the fine, no other by paroll of limitation of uses shall be averred; if any other be, it must be by writing.

2. But if the Indenture and the fine differ, other uses may be averred by paroll.

3. Not if the difference be onely in circumstances of time, unlesse a new agreement can be proved.

4. The fine cannot be directed by both the Indentures, 1. The second controuls the first: 2. They import severall contracts: 3. Distinct uses shall not commix.

Executors. Rußels caſe. f.27.

Infant executor brings an action upon Trover and converſion, the def. pleads the releaſe of the pl'.

Argued for the defendant, the releaſe is good, 1. becauſe in the perſon and right of the Teſtator: 2. The law enables him to prove the Will, and to all acts as executor: 3. It were inconvenient that he may compell payment of debts, and yet not releaſe.

Reſ. The releaſe is no barr, 1. It is a *devaſtavit*, 2. A wrong, 3. All acts in purſuance of his office are ſtrong; upon payment he may releaſe, not elſe; a Monk may, not a woman covert; the husband may, and an executor may releaſe before probate.

Middleton's caſe. f.28.

Releaſe before probate, after refuſall with others who prove, good, not of A. before adminiſtration.

Harriſon's caſe. f.28.

Executors ſhall pay debts upon bond, before ſtatutes to perform covenants, none broken; and judgments before ſtatutes.

Piggot's caſe. f.29.

Debt as adminiſtrator during the minority of A. whom he averres to be within age, and ſayes not he is within 17. years, for at that age ſuch adminiſtration ceaſes: Awarded, he gets nothing by his bill.

Princes caſe. f.29.

Reſol. 1. Adminiſtrator *durante &c.* cannot (unleſſe

(unleſſe there be a neceſſity for it) ſell any goods of the Teſtators, nor aſſent to any legacy, if there be not aſſets for debts.

2. Such adminiſtration ceaſes at 17. and betwixt that and 21. the executor cannot aſſent to Legacies.

3. If the Ordinary commit adminiſtration where there are *bona notabilia*, it is void for want of juriſdiction: otherwiſe of the Metropolitane, where there are none, his juriſdiction reaches through all his province, this is but voidable.

Coulters caſe. 30. *Yelv.* 137.

Debt againſt an executor, who pleads, *fully adminiſtred*, the Jury find he was executor of his own wrong, and reteignes, becauſe the teſtator was in his debt. Adj. for the plaintiff.

Object. 1. The pl' has affirmed him executor, and the Jury cannot find any thing againſt the confeſſion of the parties in their pleading: 2. Though he cannot retain againſt a lawfull executor, he may againſt a creditor: 3. In many caſes he that is in by wrong may retain, and cut off in damages.

Reſ. He cannot retein, for then would every Creditor, ſpecially when goods fall ſhort, ſtrive to prevent another: He may pay debts, ſo may the diſſeiſor indow the wife, ſhe cannot retein; Naming him Executor is the form.

Hargrave's caſe. f. 31. *Mo.* 566.

Debt againſt adminiſtrators of leſſee for years, for rent due after the adminiſtration committed, in the *debet & detinet* it muſt be ſo, they take the profits, and nothing is aſſets but the profits over and above the rent; where the exe-

cutor is to be named executor, the writ shall be in the *detinet* onely.

Pettifer's case. f. 32.

Upon *fieri fac'* of the goods of the Testator, the sheriff returns, *no goods* &c. a writ issues to him to enquire by enquest, whether the Executors have wasted; he returns, They have: Judgment is given of their own goods, execution is reversed by Error: the course is upon this return of *Nulla bona*, to sue a *fieri fac'* to the sheriff to levie &c. out of the Testators goods, and if it appear to him the executors have wasted, out of their own; in this latter course, action of the case lyes against the sheriff upon his false return.

Robinson's case. f. 32.

Executor barred in debt by the name of administrator, it was pleaded he was Executor; this bars the action of the Writ, not the action, he may sue as Executor.

Reads case.

After probate, A. who took the goods before, is charged as Executor.

Res. 1. Such taking makes him Executor of his own wrong.

2. After probate not, if he neither administer nor claims Executor.

3. The Executor of right, shall not be charged more then with the goods which come into his hands. N.

Amendment. Playters case f. 34.

Defendant found culpable in trespasse, *Quare clausum fregit & pisces suos cepit, &c.* damages assessed intirely; moved in arrest of judgment, That neither the nature nor number of fishes were shown. Answered

Answered for the Plaintife, the Defendant is found culpable unto damages, &c. so the nature and number of them not materiall. 2. The fishes themselves are not to be recovered, but damages for them; Therefore no need of any such exact certainty. 3. The whole damages shall be intended to be given for his close debruised; and as to that the Count is perfect. 4. It is but form ayded by the stat. 28 *Eliz.* But judgement was stayed; it is the duty of the Declaration, to reduce the generality of the Writ into certainty. Otherwise where the verdict is so generall, the jury cannot be attainted for false verdict; damages shall be intended given for the whole, because they are intire; had they been severed the Plaintife should recover for that part which is well pleaded. And the omission is matter of substance, not forme, the Plaintifes, not Clerks default, so not ayded by the stat.

Walcots case. f. 36.

Debt against Husband and Wife, upon the obligation of the Wife before Marriage in the *detinet* only; it should be in the *debet* and *detinet*, because the Husband is possessed of the Chattels of the Wife in his own right So *debet* against the heire; This is matter of substance not within the stat.

Baynhams case f. 36.

Ejectione firmæ of Lands in A. B. and C tryed for the Plaintife by the visn of A. naught. insufficient Tryalls are not helped by any statute.

Gardiners

Gardiners case, f. 37.

23. Jurors are returned, 12 appeare and find for the Pl. this is ayded by the ſtat.

Biſhops caſe f. 37.

Variance betwixt the Writ and Count, in the name of the Defendent, the Plaintife recovers upon error by the Defendent, and *in nullo eſt erratum* pleaded, the originall Writ is removed into the Kings Bench, and the judgement reverſt; the ſtat. remedies where there is no originall; not where the originall is vitious; Though it be removed after the plea, yet if the fault be apparant to the Court, the judgement ſhall be reverſed.

Teyes caſe. 38.

Husband and Wife levies a fine to A. who renders to them two, and to the heires of the Husband, and after renders part to the Wife in Taile, the remainder over; The heire of the Husband brings a Writ of Error, and aſſignes for Error that variance.

Reſol. 1. The forme in render upon a fine need not be preciſe, it ſhall be conſtrued here as a grant by Charter or other conveiance; it is but a grant of Record.

2. There are five parts of a fine. 1. The originall. 2. Licence, for which the Kings ſilver is due, which muſt be entered upon the Writ of Covenant, which the ſum, and who payes it, *viz.* he in whom the fee is repoſed. The plea betwixt whom, and the Land. 3. The concord; which is the ſubſtance of the fine, for if upon it the Kings ſilver be paid, though the party dies the fine is good. 4. The note which is often taken for

for the fine. 5. The foot of the fine, after the delivery of the indentures, the fine must be ingrossed.

3. Neither the conusor nor his heires shall assigne error in the Record, because it is to his advantage; No man shall assigne error but he that is disadvantaged.

Dormers case f. 40.

Common recovery in a Writ of entre in the Post, of one annuall rent, or pension of 4 m. and of an advowson, upon which a Writ of error is brought. 1. Because every *Precipe* must be certaine, here it is in the disjunctive. 2. The Writ of Error in the Post lies not of an advowson.

The judgement is affirmed, and upon that resolved. 1. That a Common recovery is not like other recoveries; it may be averred to be to a use 2. It is by mutuall consent, and *consensus tollit errorem.* 3. The Writ of entre in the Post lies of an advowson common, and as to the suffering a Common recovery not otherwise. For there is not any other assurance to bar remainders.

2. The demand of the rent is good, one of two things is not demanded, but one thing by two names, they are synonyma's of the same thing: more strongly here, because it is said to issue out of the Land, which a pension cannot properly do.

3. Common recoveries are so usuall, that the Judges are to take notice that they are common recoveries.

Rowlands

Rowlands case. f.41.

The pannell of a jury is annexed to the *Venire fac'* without returne, not within the ſtat. which remedies inſufficient returnes, not where there is none at all.

Counteſſe of Rutlands caſe, f.42.

R. *Moore* is returned upon the *Venire fac.* In the pannell before the Juſtices of Aſſiſe, and in the *Poſtea* he is named R. *Mawr.* It appears *Moore* was his true name, and that he is the ſame that was ſworn; good: This was diſcontinuance againſt the Jurors at the Common Law, and diſcontinuances are helpt by the ſtat. otherwiſe had he been miſnamed in the *Venire fac.* and truly named in the Panell and *Poſtea.*

Codwels caſe. f.42.

Juror who has given verdict was miſnamed in the *Venire fac'* not in the *diſtringas* and *Poſtea.* Judgement ſtayed.

Nichols caſe. f.43.

C. brings an action of debt upon a ſingle Bill, Defendant pleades payment, found for the Plaintife: ſo iſſue is joyned upon a point not materiall, yet after verdict, it is ayded by the ſtat.

Bohuns caſe. f,43.

Fine levied of a Mannor and other Lands, to the value of 20 m. by the year, ſo that the Kings fine was 40 s. which was paid, but in entring it upon the Writ of Covenant the mannor was omit-

omitted. Error brought; after the transcript of the fine was removed into the Kings Bench, and the Banke amends the record, it appeared the Kings silver was payd for the Mannor; they amend the Writ of Covenant too, which was *fiede me ipso* for *Teste me ipso*; This was certified into the Kings Bench, upon diminution alledged, &c. and allowed.

Freemans case. 45.

The Writ in waste citing the stat. of Gl. has *destrictionem* for *destructionem*. This shall not be amended, it is matter of substance, it alters the sense, and matters of substance in originall Writs are not amendable by any stat. though it was the Clerks fault.

Gages case. f. 45.

Writ of Covenant to levy a fine, bears date after the returne, amendable because a common assurance.

Cookes case. f. 46.

So of a common recovery of Isfield by the name of Iffield; it appearing to the Court collaterally that Isfield was meant.

Pardons. Franklins case f. 46.

A Bill exhibited in the Star-chamber for ryot, five years before the generall pardon 35. *Eliz. Resp.* The Queenes fine is excepted, not the corporall punishment: had it been exhibited within foure years all had been excepted; the Queens Atturney may proceede for the fine.

Guilbert

Guilbert Littletons case. f. 47.

Bill exhibited in the Star-chamber before the 35. of *Eliz.* the returne after, this is excepted out of the generall pardon, it was depending before the returne, but if a writ originall issue out of the Chancery, returnable into either Bench, it is not depending before the returne, because out of another Court; after the returne it is, by relation, from the day of the *sesse.*

Driwoods case. f. 48.

Bill in the Star-chamber more then foure years, and within 8 years before the *Parliament* 39. of *Eliz.* the Plaintife dies before the generall pardon; This is pardoned, it depends not now; The words, *remaining to be prosecuted*, are to be meant by the party, not the Atturney generall.

Vaughans case.

Writ of entry in *quibus*, depends in *Wales* before the generall pardon, after the Plaintife has judgement, the Defendant shall not be amerced.

Resol. 1. The amercement is pardoned, because the wrong is, which with the delay was the ground of it.

2. The stat. of Jeofayles extends to *Wales*, because parcell of *England* by stat.

Wyrralls case. f. 49.

Generall pardon excepts debts due to the Queen, debts due originally to the subject, as the conusee is out-lawed, are not excepted.

Biggin

Biggins case, f. 50.

The King may pardon the burning of the hand, where the Defendant is found guilty of man-slaughter in appeall. 1. This was but to notifie to the Judge whether the offendor has had his Clergy or no. 2. It is no part of the judgement, and the party shall be at large, by equity of stat. 18 *Eliz.* c. 7. which provides that after Clergy and burning in the hand, he shall be at large: otherwise, being pardoned he shall be imprisoned for ever.

Hall's case f. 51.

C. Libells in the Court *Christian* for defamation against H. sentence is given and costs taxed to be paid at a day to come. H sues an appeale, then procures the Kings Pardon, and brings a Prohibition.

Resol. 1. All suits in the Court *Christian* for the soules good, and reformation of manners, are for the King, as suits in the Star-chamber; He may pardon them before and after they are begun, not where the party sues out of interest, as for Tythes.

2. All proceedings there *Ex officio* are for the King, pardonable by Him.

3. Though the King may pardon the suit the costs He cannot, they are taxed, and the party has an interest in them; otherwise when the pardon precedes the taxing.

4. The sentence by the appeale is suspended to many purposes, yet till reversall the party has such interest in the costs as is not pardonable by the King.

Pages

Pages case. f. 52.

I. deviſes to his Wife an alien, ſhe is made denizen before his death: the date of the Letters Patents it after the death of I. and falſe; ſhe gets an exemplification, it is found by Commiſſion under the Exchequer Seale, that ſhe is an alien; in information ſhe pleads the exemplification.

Reſ. The Office it void, every Office of intitling, ought to be under the great Seale; good enough if an Office of inſtruction. 2 It appears not what authority the Commiſſioners had; onely ſaid, an inquiſition taken by virtue of a certaine Commiſſion; An exemplification and an *Inſpeximus*; As an *inuoteſcimus* and a *vidimus* are the ſame.

Knights caſe. f. 54.

The Prior of S. *Iohn* of I. 29. *Hen.* 8. leaſes divers houſes, reſerving 5 l. 10 s. 2 d. by year; at the foure uſuall feaſts, in *London*, *viz.* for one houſe 3 s. 2 d. ſo ſeverally of the others, with condition to re-enter for not payment, after he ſurrenders to *Hen.* 8. who *Anno* 36 grants a houſe to the leſſee, and another in fee, after by office under the Exchequer Seale it is found that 37 s. 5 d. parcell of that rent is behind at one of the feaſts; before returne of the office, or ſeiſure, the King grants the reſidue of the houſes to A. who leaſes to the Plaintife, who upon entry of the Executors of the firſt leſſee brings Treſpaſſe.

Reſol. 1. The leaſe is intire; the *viz* dos but declare the ſeverall values of the houſes, and ſevers not the reſervation, but by fit words ſundry parcells may be ſeverally leaſed by one demiſe,

demise; and severall Rents reserved.

2. Let them be severall rents, the condicion is intire, and in the case of a subject, by severance of any part of the reversion extinguishes.

3. This being the Kings case, his patentee of part, shall not take advantage of the condicion, himselfe shall; as to the residue, the condicion remains with the reversion which the King has, though the lease moved originally from a subject.

4. Though more is found arrere, then was reserved, it is well enough, the office has matter of substance.

5. The grant after office and before returne is good; By entry of the Patentee without other seisure, the lease is void; which had not been by the bare clause of re-entry without office.

6. This office under the Exchequer Seale is enough to intitle the King to a chattell.

Specots case. f. 51.

S. and E. his Wife bring a *Quare imped.* against the Bishop of E. and count that I. was seised of a mannor to which was an advowson appendant in soccage, which he devised to the Wife: and they presented the incumbent, who is dead, and so it belongs to them to present; the Defendant pleades, the Plaintife presented H. who is a schismatick; concerning which he gave notice to the Plaintife: adjudg. for the Plaintife in the Bank, and the Bishop amerced; he brings his Writ of Error, the judgement is affirmed in the Kings Bench, and the Bishop in *Misericordia*: errors assigned were these.

First, no presentment is alleged in I. not allowed, the presentment of the Plaintife sufficient for themselves.

2. The

2. The Bishop needs not show any particular schism; The Kings Court cannot judge it, the Bishop is judge, and the Law believes him. And it is a good cause to remove a Coroner, because he is, *minus idoneus*. Answered, he must show the schisme in certaine; Though the Bishop be judge his proceedings are not of record but traversable; if traversed, and the party refused alive it shall be tryed by the metropolitane; if dead, by the Country: and though it belongs not to the Kings Court to judge heresies, yet the generall cause of the suit being within their cognisance they shall determine it, therefore it must be certainty declared that the Court by advise of Divines may proceede accordingly. It is not like the case of the Coroner, for the cause why the King removes him is not traversable.

3. The Bishop is amerced in the Bank, and the judgement in the Kings Bench is, that he shall be in *Misericordia*; For though in trespasse against two, where both are found culpable severally, the Defendant shall be amerced, and the Plaintife severally against either of them, yet so he shall be amerced but once to one, as A. pleades severall pleas, he shall be amereed but once.

Answered. He is but once amerced, The second judgement is but in affirmance of the first; and admitting the second judgement null for this cause, yet the first shall stand.

Fosters case, f.59.

A Justice of Peace issues a Warrant to a Constable, to bring one before some Justice of Peace, to find surety of the Peace; the Constable apprehends him; the party would find surety before

before such a Justice, the Constable carryes him to another, the party refuses to find surety, the Constable carries him to the Gaole, he brings his false imprisonment.

Res. 1. Upon this Warrant, the Constable may chuse the Justice, not the offendor; but the Justice might command by his Warrant to bring him before himself. *vide contra.*

2. Upon refusall, as here, the Constable may imprison him.

Gooches case. 60.

Action against A as heir; he pleads, nothing by discent, given in evidence for the pl', that lands in fee discended; alledged for the def. he had conveyed them over; for the pl', that was by Covin, upon which speciall verdict is found, Adj. for the pl'.

The pl' needs not plead the Covin, but may give it in evidence, 1. because the statute makes the feofment void: 2. It is dangerous to force him to plead Covin, which is so secret.

Note, the purchaser knowing a fraudulent conveyance is made may avoid it.

Sparry's case. f. 61.

Action of *Trover and Conversion*, the defend' pleads, there is another action depending for the same *Trover*, it is good; Not in actions which comprehend no certainty, as *Assise* or *Trespasse*, though the Count makes them certain, there yet after plaint or Count it is, in this action in *Debt* and *Detinue* the plea is good at the first, they are certain; In no action is it a plea, that another action depends for the same thing in an inferiour Court.

By-laws.

By-lawes.

Chamberlain of Londons case. f. 62.

Chamberlain of L. in debt Counts, *That it is ordained in L. that every man shall bring his broad-cloaths to B. to be marked, paying for every broad-cloath* 1 d. *on pain to forfeit* 6 s. 8 d. *for every cloth, recoverable by the Chamberlain in debt.*

Object. Such ordinances are against the freedome of the subject, to cause any man to bring his Cloth to a certain place; and by the same reason they impose 1 d. they may compell the payment of more.

Answered, Corporations may make By-laws for the weale publike, the greater number obliges the whole, without custome; not in private Ordinances, as for ordering their Common, without custome: this Ordinance is in order to the executing the statute of Cloths, the penalty, and all the parts of it, are reasonable.

By-laws. *Clerks case.*

When the Term was to be kept at S. *Alb.* the Mayor and Burgesses assessed a sum upon every man to build Courts, on pain of imprisonment; they imprison C. who refuses to pay, he recoves in false imprisonment: it is against the statute of *Magna Charta,* they may inflict any other reasonable penalty.

By-laws. *Mich.* 31. & 32. *El.*

The Church of H. in decay, an assessment is made upon every acre within the Parish to repair it, the Church-wardens libell against A. in the Court Christian, who refuses to pay his part, having land there in his own occupation, but abiding elsewhere; he brings a Prohibition.

Re.

*Reſ.*1. The Court Chriſtian has the cogniſance of reparation of the body of the Church.

2. A. occupying land in the Pariſh, though his houſe be ſomewhere elſe, ſhall be reputed a Pariſhioner, and contribute to the repair of the Church; otherwiſe the greater part of the land in the Pariſh may be occupyed by ſtrangers, and the Church fall down, but the plaintifs fermor ſhall pay it, if he have any.

3. This is not a charge upon the land, but upon the perſon in reſpect of the land, by æquality.

Though the libell be diſ-junctive, that he occupies the lands, or receives the rent for them, yet becauſe by the plaintifs Count it appears that he occupies them, ſpeciall conſultation was granted, to charge him in reſpect of that land onely.

Lord Cheyney's caſe. f.68.

C. deviſes to H. C. in tayl, the remaind in tail, on condicion, that he or they ſhal not diſcontinue &c. the averment, not received; that the intent of the deviſor was, that the remainder alone ſhall not be reſtrained to diſcontinue, becauſe it appears not in the deviſe: But if A. having two ſons named I. deviſes to I. his ſon, averment may be taken who was meant, otherwiſe the deviſe is void.

Burton's caſe. f.69.

A. lends to W. the 17. of *July* 21. of *El.* 100 l. in conſideration of which W. grants A. a rent charge of 20 l. by the year, the firſt payment at the Nativity 1580 on condicion of the payment of the 100 l. this is out of the ſtatute of uſury, W has the 100 l. one year without conſi-

deratio

deration, and if he pay within that time A. is not to have the rent, so he is not assured of any consideration; if it be agreed, the 100 l. shall not be paid, this shall be construed within the statute.

Clayton's case. f. 70.

30 li. lent for half a year, to receive 33 l. if the son of the obligee be alive, if not, 27 l. this is within the stat' of usury.

Hoe's case.

M. is baile for C. in an action where H. is plaintif, H. has judgment and *scire fac'* against the def. and in his default against the bail, who pleads the pl' release before judgment, it is nothing. A certain duty, with a condicion subsequent, may be released, as an obligacion; not an incertain duty with a condicion precedent before the time, as here, warranty may be released before suit, because of the *warrantia charta*, and a covenant before it is broken. Mo. 469.

St. Johns case. f. 71.

Res. 1. Carrying a Dagge is within the stat' 33 H. 8. c. 6. which forbids hand-guns; so crosbowes are forbidden, and stone-bowes are within it.

2. The generality of the statute prohibits not these Weapons to be carryed in execution of justice.

Williams case. f. 72.

W. prescribes that the Vicar of A. should celebrate divine service within his Mannor for him and his tenants, and for failing brings his action on the case. *Res.*

Ref. It lyes not; thus every tenant may sue the action, his remedy is to sue in the Court Christian; if the prescription were for him and his servants, otherwise, there he should sue alone.

Case of the Orphans of Lond. f. 73.

Prohibition lyes if any Orphan of L. sues in the Court Christian, or Court of Requests, their government belongs by custome to the Mayor of L. Thus of a will proved in the Court Christian, where the probate belongs to the Lord of a Mannor.

Wymarks case. 74.

Pl' in *Ejectione firmæ* Counts of a lease by S. the def. pleads in bar, an Indenture of bargain and sale by S. to W. who was seised untill S. disseised him; who leased to the pl', and he as servant of W. entred. Three terms after he replyes, that the bargain and sale was upon condicion, which is broken, and the bargainor entred and leased to him: he shews not the bargain of sale.

Ref. When a deed is shown, it remains in the Court the whole Term, which is in judgment of Law but one day; and as well strangers as parties shall take advantage of it, without showing; but after the Term it shall be delivered to the party; if it be denyed, it shall remain in Court for ever, for if it be found not his deed, it shall be cancelled.

2. The course of the Kings Bench is, that Imparlances to plead in bar shall be entred, not Imparlances to reply or rejoyn; so that replication here, though it be three terms after the barr, it shall be intended to be the same Term; so no deed shown.

Clifton's case. f. 75.

Husband and wife Leſſees for life in right of the wife commit waſt, the wife dyes', waſt lyes not againſt the husband, he is not leſſee within the ſtat' of *Glocester*.

Pilkinton's case. f. 76.

Reſ. 1. The party may tender amends for damage feaſant, before, not after the impounding.

2. The tender ought to be to the party, not to his baily.

Earle of Pembroke's case.

Where the def. ſhewes a deed to the Court, the pl' may pray that it may be entred in theſe words, the ſame Term, and not after.

Booth's case. f. 77.

Waſt by him in reverſion againſt the aſſignee of the leſſee for years, the def. pleads aſſignment before waſt, the pl' pleads the ſtat' 11. H. 6. c. 5. and that the def aſſigned, that he might not know againſt whom to bring his action, and averres him tenant of the profits: The def. traverſes the intent.

Reſ. 1. Though the ſtat' ſpeaks only of the leſſee, the aſſignee is within the equity.

2. Where the ſtat' ſpeaks only of the reverſion, the remainder is within it,

3. The pernancy of the profits, not the intent is traverſable; that is notorious, not this.

Samon's case. f. 77.

Pl' and def. ſubmit themſelves to the arbitrement of A. who awards, that the def. ſhall enter into bond that the pl' and his wife ſhall enjoy ſuch

such land quietly, it is void, because of the uncertainty of the sum in the bond: if any man covenants to enter into such a bond, it shall be to the value of the land.

Grey's case. f.78.

The pl' in replev' pleads in barr of avowry, that he has common of pasture by custome; upon issue joyned it is found that he has, but that he payes for it 6 d. by yeer; the pl' recovers. 1. He shall not be forced to shew that which is to his disadvantage; 2. because it is not parcell of the custome; otherwise were it that he has common paying 6 d. 3. Because the Lord has his remedy by distresse; not so if he had not, as A. prescribes to water, but by use is to pay 6 d.

Fitzherbert's case. f.79.

The father tenant for life, remaind' to the son, leases for years to A. with a designe to barr the son, A. enfeoffes B. to whom the father releases with warranty, and dyes, the son is not barred. Though the disseisin by the feoffment precedes the warranty, yet because it was to the intent, the law judges upon the intire act, this is warranty which begins upon disseisin. 2. Though the father be disseised, yet because it was with his consent, it is the same: the fathers feoffment with warranty had barred the son.

Ford's case. f.81.

A Prebend leases for 70 years, the Patron Dean and Chapter confirms *dimissionem prædict'* in the form aforesaid for 51 years and no farther, this confirms the intire term, after the term confirmed; for 51 years &c. are repugnant and

void, otherwise had they recited the leaſe, and confirmed the land; theirs is more then a bare authority or aſſent, their aſſent is with an intereſt, otherwiſe, had they but a bare aſſent.

But had they confirmed a leaſe for life, or an eſtate by what words ſoever in part, it confirmed the whole, becauſe intire; as if they confirm the eſtate of the diſſeiſor or his leſſee for years for an hour.

Snelling's caſe. f. 82.

S. brings an action of debt againſt an adminiſtrator, who pleads, there is a cuſtome in Lond. that an adminiſtrator ſhall pay debts upon contract to a Citizen, as well as upon bond, and that A. has recovered upon contract, it bars.

Reſ. 1. Though debt is given againſt adminiſtrators by ſtat' 31 E. 3. yet becauſe they were charged as executors before, ſo that onely the name is changed, the cuſtome generally alledged is good.

2. The Ordinary by taking the goods into his hands was chargable at the common law.

3. This cuſtome binds ſtrangers.

Caſe of Market open. f. 83.

Shops in L. are market open, for things to be ſold there by the trade of the owner: the ſale of plate in a Scriveners ſhop alters not the property, otherwiſe of a Gold-ſmiths ſhop, if in the ſight of thoſe that paſſe the ſtreet.

Periman's caſe. f. 84.

The cuſtome of a Manor, that all ſales, feoffments, &c. of land, are to be preſented in the Court of the Mannor, is good.

Obiect.

Object. What remedy if the Steward accept not the presentment? *Ans.* What remedy if the Clerk will not inroll the bargain and sale? Let the buyer beware. 2. The interest vests by the feofment in the feoffee, which shall not be devested by presentment. *Ans.* Livery is ordained to give notice, and custome more solemn and notorious is good.

Sir *Hen. Knivets case.* 85.

Tenant for life, remaind' in fee, leases for years, lessee for years is outed, the disseisor leases to A. who sows the land, tenant for life dyes, the remainder enters, the lessee of the disseisor enters, the remainder brings an action of trespasse, the def. pleads, not culpable.

The right of the crop is neither in the pl' nor def. but in the lessee for years of the lessee for life; the def. has a better right then the pl' by reason of the possession, therefore had he pleaded the cause of his entry to take the crop, it had been good, but pleading as here, the pl' had judgment as to the entry, not for the residue.

Penry's case. f. 85.

W. brings a *Quod ei deforceat*, in nature of a Writ of right in *Wales*, and after the mise joyned is non-suited, judgment finall is given, he brings such another Writ, the first judgment is pleaded in barr, he demurres, Adj. against him, --- in Error brought.

Res. 1. Though by stat' 12. E. 1. tryall of right in *Wales* shall be by common Jury, judgment finall shall be given.

2. Judgment finall erronious in a Writ of right, shall bind till reversall.

3. Judgment finall shall not be given upon

the default of the tenant, in a Writ of right, but the *Petit Cape* shall issue: The default may be saved.

Execution. *Blumfields case. f. 86.*

Two bound in an obligacion jointly and severally, one is sued, and in execution, so is the other; the first escapes, the second brings an *Audita querela*, it does not lye; the action against the sheriff upon the escape is not satisfaction of the debt, he may be worth nothing; and if both had bin sued by one writ, and severall *Precipe's*, the entry shall be, that there be one execution, *viz.* with satisfaction, for they shall both be in execution: If the conusor of a stat' staple, or merchant escape, his lands and goods may be extended; so if he dyes in prison: 1. because the not payment is the wrong of him in execution, which shall not prejudice the pl'. 2. Because execution of the body is not satisfaction. 3. Death is the act of God. 4. There is difference betwixt execution which is valuable, and which is not; valuable execution, by common law, cannot be had twice, as in eviction of lands executed; otherwise of invaluable. Also no new can be, where execution was finall before; there may where execution was *Quousque*, as here. Cr. 2. 734 Mo. 857. contra.

Execution. *Garnon's case. f. 88.*

L. recovers against W. W. is outlawed, in error the judgment it affirmed, and the def. is taken by *Capias utlag'*, he escapes before the return of the writ, debt against the sheriffe, L. recovers.

Res. 1. Though at the common law by outlawry of the def. after judgment, the pl' is at the end

end of his suit and, without remedy against the Defendant, yet when the Defendant is taken by *Capias utlag.* no default in the Plaintif, if he will, he shall be in execution for him. [*Rep.* 3. *Herb c.*]

2. If judgement in debt be removed by Error into the Kings Bench, and affirmed within the year; they will award a *Capias* or *Fieri fac.*

3. Though W. was not in execution for L. nor brought in to the Court, yet if L. will, he shall be in execution for him, from the time of the arrest; where a *Capias* lies the other may be in his execution without request; where a *Fieri fac'*, or *Scire fac'*, must be sued, not without request. No 566. me.

Execut. Frosts case. f. 89.

F. recovers against B. and out-laws him, after the year past he delivers a *Capias Utlag.* to the Sheriffe of *London*, L. a Sergeant arrests B. at the suit of A. F. comes with the Sheriffs warrant to arrest B. by force of the *Cap. Utlag.* the sergeant refuses, B at large. F. sues the Sheriffs and recovers.

Res. 1. B. arrested at the suit of A. was in execution by force of the *Cap.* upon delivery of it.

2. Though after the year B. shall not be in execution without the request of the Plaintife, yet because by stat. 5 *Ed.* 3. c. 12. he is to find surety to satisfy the Plaintife before his inlargement; debt lyes against the Sheriffe.

Execut. Hoes Case.

H. has judgement to recover, assignes it to the Queen, Proviso to be void upon the revocation of the Barons of the Exchequer, or any

two of them. The Queen sues execution, no returne. 3. Barons revoke, H. being dead, this executors sue an action of debt.

Resol. 1. Execution of goods in case of the King, or subject is good without returne of the Writ. 1. The debt is lawfully levied. 2. The effect of it is executed. 3. It were mischievous that a new execution should be, upon the default of the Sheriffe. 4. If the sale should be naught, because there is no returne, who would buy such goods; the Sheriffe only to be amerced; no return is necessary in *Capias ad satisfac. in elegit* and *Capias* in Proces otherwise.

2. The revocation comes too late, after execution, which is the effect of the assignment. 3. Revocation by three is revocation by two.

Execut. Semaynes case. f. 91.

Plaintife and B. joynt Tenants of a house, B. acknowledges a stat. and dyes, the Sheriffe breakes the house to execute the extent of the Conusee, the Plaintife brings his action on the case.

Resol. 1 A mans house is his Castle.

2. If the Sheriffe be to deliver possession upon recovery in *ejectione firmæ*, he may break the house, it is not the Defendants after judgement.

3. So may a house be broken where the King is party, and execution to be done.

4. If the dore be open, the Sheriffe, in a subjects case, may enter.

5. No mans house privileges more then the Master and Family, if goods of a stranger be there, the Sheriffe being to execute the Proces of Cap. &c. if he be denyed accesse, may break it open.

6. The

6. The Sheriffe in this case has not pleaded any request, which being so materiall ought to be certainly pleaded; *præmissorum non ignarus* is not enough.

Barwics case, f. 93.

E 6. demises for 21 years, Queen *Eliz.* leases the reversion for 21 years to B. who makes severall leases *in futuro*, and 23 *Eliz.* on consideration of surrender, grants to the said B. for 21 years; and 26 *Eliz.* grants to him for three lives from the day of the making, &c. on consideration of surrender of the Letters Patents of 23 of *Eliz.*

1. The demise for three lives is voyd, being made upon consideration of the surrender of the Letters Patents of 23 *Eliz.* which were voyd; they being upon consideration of surrender of the whole estate which was not performed, part being leased out to diverse before.

2. The lease of 26 *Eliz.* is voyd, because the Queen passes a frank Tenement in future.

3. Livery cannot operate in future, and the Letters Patents amount to livery. Note livery to one joynt Tenant in name of both is good, not to one Atturny in name of both.

Goodals case. f. 95.

Upon speciall verdict, the case was this; Sir I. P. enfeoffes W. upon condicion after the death of W. to pay to the Heires, Executors or Administrators of the said W. 100 l. W. enfeoffs A. by whom the Plaintife claimes, and dies; by agreement I. P. payes the 100 l. to the heire of W. who repayes all but 32 l. P. enters, and was seised till A. outs him: adj. for the Pl. lessee of A.

Resol. 1. The condicion is not performed as it ought to be, really, the subsequent payment is directed by the agreement precedent, the estate of A. is not devested by it.

2. Otherwise had the condicion bin truly performed.

3. Heires, Executors, &c. being alone named, no payment can be made to the assignee, but the assignee not named may pay for the preserving the estate.

4. Though no title is derived to the Defendant from P. yet because the Jury refers only the doubt of the payment to the Court, the residue shall be supplied.

The Countesse of Northumberlands case. f. 97.

Diverse Coparceners joyn in a *Quare impcd.* the Defendant pleades a release of the husband of one of them; This barrs only the releasor and his Wife, the whole vests in the other Coparceners being a thing intire in the realty.

Buryes case. f. 98.

Husband and Wife divorced *Causa frigiditatis*, of impotency in the husband, he marries againe and has issue, it is legitimate; The first marriage was dissolved from the matrimoniall tye or bond, and admitting the second marriage voideable, yet it is good, till it be avoyded.

Flowers case. f. 99.

R. indicted of perjury for giving false evidence to the grand inquest, upon an inditement

ment of Riot, is discharged: the stat. 5 *Eliz.* c. 14. speakes only of Writ, Bill, Action and Information, procuring perjury upon inditement out of the branch.

Rookes case.

807. Acres subject to be surrounded, the Commissioners of sewers tax R. that ownes the next 7 Acres to repair alone; distresse for default of R. who sues replevin; The Jury finds the occupiers of those 7 Acres ever used to repair.

Res. 1. This finding of the Jury is void, the occupiers may be lessees for years, or at will, which cannot prejudice the reversion.

2. The 807 Acres ought to be equally taxed by stat. 6 *Hen* 6. c. 5. though authority is given to the Commissioners to proceed according to their discretion, yet is it fit they should proceed according to reason, and what can be more reasonable then that all should contribute, who are benefited? This notwithstanding the prescription, the Land adjoyning may not be worth the charge.

Penruddocks case. f. 100.

C. raises a house to the nusance of the house of D. C. conveys his house to the Defendant, D. his to the Plaintif; who brings his *Quod permittat*, and Counts of the dropping down of water.

Object. The wrong by conveyance of the house to which, &c. is remediless, as the Lord incroches, and the Tenant converys over the Tenancy. *Res.* the new dropping in the time of the feoffee is a new wrong, which shall be reformed after request against the feoffee, and before,

before, against the feoffor; W. 2. c. 24. The feoffee may beat down the nusance as well as the feoffor.

Windsors case. f. 102.

The Plaintife has an advowson of two parts, the Defendant of the third part, the Plaintife presents for his turne P. who 1. *Mar.* is deprived, the Defendant presents one, who is deprived the 1. of *El.* and the first sentence against P. made voyd, and he restored; both the incumbents dye, the Defendant presents, the Plaintife brings a *Quare Imped.* Two to present by turnes, the presentee of one is deprived for heresie; so that the admission, &c. is void by relation, yet he shall not present agen; It was not voyd, but voydable by sentence; but in the case here it is void, the incumbent of the Defendant was admitted in the life of P. otherwise had P. dyed before the second sentence.

The Writ was *ad ecclesiam*, and the Count *de advocatione duarum partium*, it is good.

Hungates case. f. 103.

H. of one part, M. and S. of the other, bind themselves to arbiterment, so that it be done and delivered to both parts, &c. It is made and delivered onely to H. and M. H. brings debt, adj. for the def.

Resol. 1. *Uterque*, is sometimes taken distributively; sometimes collectively, according to the matter subject, here collectively.

2. Two of one part, two of another, the words as here, delivery of the arbiterment must be to all.

Bakers

Bakers case. f. 104.

Any of the parties offer to demur upon the evidence of the other, the other cannot refuse to joyn in demurer, unlesse he waive his evidence, the King may refuse.

Boulstones case.

A. makes conyboroughs, no remedy for the neighbour, he may kill the Conies when they come upon his ground. Only the Lord of a Mannor may erect a Dove-cote, the punishment is in the leet, not by action. *Mor.* 238.

Aldens case. f. 105.

Ancient demesne a good plea in *ejectione firme*, though it be in nature of trespasse, because the Frank Tenant may come into debate, and the interest of the Land is bound.

Sir *Henry Constables case. f.* 106.

Plaintife has a Manor and wreck of the Sea, a Ship perishes there, goods are driven ashore within the flowing and reflowing of the Sea; others flote upon the water, the Defendant takes them to the use of the Lord Admirall; the Plaintif brings trespasse, the Jury finds for the Pl. and assesses dammages intirely.

Res. 1. Wreck is goods shipwracked and cast or left on the Land by the Sea; *flotsam* which flote; *Ietsam* cast into the Sea to save the Ship which yet perishes, *Lagan* which are thrown into the Sea with a boy tyed to them: any of these thrown upon the shore are wreck; stat. 5 *Ri.* 2. c. 3. denies the Admirall jurisdiction of wreck, not of these.

2. The

2. The soyle betwixt high and low water mark may be the subjects, when covered with water, the Admiralls jurisdiction reaches to it.

3. *Flotsam*, *Jetsam* and *Lagan* are the Kings, where the Ship perishes, and nothing alive escapes.

4. The stat. of W. 1. c. 4. of wreck is in affirmance of the Common Law.

5. Because here part of the goods are wrecked, and part not, and dammages are intirely assessed; judgement is given for the Defendant. An infant who claimes not wreck within the year is bound.

Foxlies case, f. 109.

Action upon Trover, &c. the Defendant pleades, that a person unknown, stole goods and brought them to a Mannor of the Queens, and there waived them, and he seised them to the Queens use, and he prayes in aid of the Queen; the Plaintife demurs.

Res. 1. No aid shall be granted, it appeares not the goods were forfeited to the Queen, because it appears not they were waived out of fear of pursuit; so had he hid, or left them in some house, and fled, not being pursued: also where goods are waived upon fresh pursuit, they are not forfeited, if the Theif be attained at the suit of the owner: if he omits any part in his appeal it is forfeited.

Prescription may be of goods forfeited without any record, as here, not of goods forfeited by record, as goods of felons.

2. The demurer is not peremptory.

Malloryes

Mallories case. f. 111.

Abbot of S. demises for years to A. M whose estate the Plaintife has, rendring to him such rent, &c. or to his successors, on condition, and surrenders to the King; he grants to S. who levies a fine to B. in fee, who before atturnement grants to the Defendant, the Plaintife atturnes, the condicion is broken; the Defendant distraines for dammage feasant, the Plaintif brings an action of Trespasse.

Res. 1. The reservation to him or his successors is good, and as if it were to him and his successors.

2. The conusee of a fine shall not take advantage of a condicion without atturnement, the stat. 32 *H.*8. giving grantees like advantage with the grantors, is to be meant of compleat grantees with all ceremonies.

3. Though the conusee could not, his grantee may; the stat. is not to be intended of the immediate grantor.

4 There must be atturnement expres; For had the conusee in the case enfeoffed A. the lessees re-entre, makes privity enough for debt or wast, but betters him not as to the condicion.

Wades case. f. 114.

I. surrenders a copyhold upon condicion of payment of 250 l. at a day certain, to W. he tenders, part in *English*, part in *French* and *Spanish* monies, at the day before noon, W. refuses, after he tenders the sum in *English* mony in bags.

Res. 1. Tender any time of the day saves the condicion.

2. Ten-

2. Tender of *French* and *Spanish* mony good, they are current by Proclamation.

3. Tender of more then needs is good.

4. Tender in bags is good; the morgagee shall take out the mony, and tell it, or take it at his peril; if he accepts counterfeit mony yet is the condicion saved.

Foliams case. f. 115.

Resol. 1. *Estrepement* lies at any time before Execution in wast, for the Plaintife cannot recover more then is contained in his Count.

2. The Sheriff by force of this Writ, may raise the *posse* of the County, and oppose those that will commit wast.

Olands case. f. 116.

A Woman Copyholder during her widowhood; sowes the Land and marries, the crop is the Lords, though the estate was incertain, it determined by her own act; so of Lessee at will, who determines the will, otherwise if husband and wife being Lessees during the coverture sow, and are divorced because of precontract; this is the act of the Court.

Pinnels case. f. 117.

Payment of part of the sum in the obligation at the day, and place, is not satisfaction for the whole; otherwise if before the day or in another place.

Edriches case. f. 118.

Rent charge granted to B. for the life of C. the grantor leases for life to D. the remainder in

infee to E. C and D. dye, B. shall distrain by the stat. 32. H. 8.

Whelpdales case. f. 129.

In debt against a joynt obligor, the Defendant pleads *non est fact* adj. for the Pl

Res. 1. He may plead in abatement of the Writ, not *non est fact.* each is bound in the intirety, therefore if debt be brought against two, and one is outlawed, the other who appears shall be charged with the whole.

2. If the Deed be only voydable by plea; *non est fact.* is not pleaded.

3. Where the Deed is voyd by stat. it is not to be pleaded *non est fact'* but it must be a voyded by plea; if by matter afterward it become not his Deed, he may plead *non est fact.* as if a Deed be delivered, to be delivered to another, who refuses it.

Longs case. f. 120.

1. Exception to an inditement of Murder; The inditement is alleged taken within the liberty of G. and it is not alleged that C. is within the liberty. *Answ.* To inditements a cartainty, to a certain intent in generall, is sufficient; and not to every particular intent, for that were too much subtilty; and it shall be strongly intended, that the Town of C. is within the liberty of C.

2. The words of the inditement are, *Quod dedit vulnus super anteriorem partem corporis super dextram mamillam.* *Res.* False Latin quashes not an inditement, if the word be sensible; but the word is good Latin, and were it not, it is of abundance, for *super anteriorem partem corporis* is sufficient; it shall be intended the Trunk betwixt the neck and thighes. 3. *Vulnus*

3. *Vulnus* is used for *plaga*. *Resp.* It is good, they are severall words which signifie the same thing.

4. The profundity is not shown. *Answ.* It penetrated the whole body, and so appears to be mortall.

5. It is not said the bullet, but the wound penetracted the body. *Answ.* Enough significant.

6. *Percussit* is wanting, for this cause the inditement was quashed; in all cases of death, it must be used but in case of poysoning.

Saffines case, f. 123.

Lessor for years before the entry of the lessee enfeoffes, and levies a fine five years barr the lessee.

Resol. 1. The stat. speaks of intereſts in generall, and a lease of years is an intereſt.

2. By the feoffment the lessee has but a right, which is barred by the fine.

De libellis famosis. f. 125.

1. Punishment of a Libeller must be according to the quality of the person he scandalizes. 2. Libells against the dead are punishable, it incites the Family to revenge, and tends to the breach of the peace. 3. The punishment shall be by inditement, or in the Star-chamber. 4. No matter whether it be true or false, it may be by writing, pictures or signes. He that finds a Libell must burn it, or deliver it to the Magistrate.

Palmers case. f. 126.

Guardian in Knights service shall have the single

ſingle value of the Marriage without tender. *Object.* by *Littleton*, and other Books, the Marriage belongs to the Lord, it is not ſaid the value: The Lord muſt doe the firſt act, which if he omits the Heir is excuſable. Alſo the Writ ſuppoſes the tender. *Anſw.* At the Common Law, the Value, or Marriage is at the Lords election: For if the Ward be raviſhed and married, the Lord ſhall recover the Value in damages. 2. Elſe might the Heir defeat the Lord by marriage before; or by flying beyond Sea, ſo that the Lord cannot tender at all. The Writ is framed according to the uſuall courſe, which is to tender.

Lib. VI.

Bruerton's caſe. f. 1.

LOrd and Tenant of three Acres, by Homage, Fealty, a Sparhauk and Suit: Tenant enfeoffes A. of one acre, A. by Common Law ſhall hold by all the intire ſervices, Annual, and Caſuall; and the Stat' of *Quia Emptores* extends not to intire ſervices, but by the Stat' of *Malb.* the Feoffees ſhall make but one Suit, and there ſhall be Contribution to him that makes it: This is in Feoffments of many ſeverally; Jointenants, where the poſſeſſion is individed, are not within the Statute. No Contribution amongſt them without agreement, yet they ſhall make but one Suite, &c.

2. Intire ſervices multiply by the act of the Tenant,

Tenant, extinguish by the act of the Lord, as he purchases part.

3. Unlesse the intire services be for the publick good, such remain.

4. So if part come to the Lord by act in Law, unlesse where Contribution is to be; for the Lord cannot contribute.

5. If his own act, and the act in Law mix, as the Lord recovers in *Cessavit*, the intire services are gone.

Markal's case, f. 3.

In Formdon in remainder by an Infant, of a remainder limited to his Father, and his Heirs, the Tenant cannot pray that the Action may not proceed till his full age: In actions Ancestrell the Tenant may make such prayer, because there is only a discent of Right to the Infant; and the Law will not suffer him to run any hazard, fearing his negligence, and doubting his understanding: Not in actions Possessory, every man then would injure the Infant, were the mischief a lawfull mischife, that the possession should not be regained but with his Age. So in all Writs, where the cause of Action happens in the Infants time. Actions Ancestrel are of two kindes, Droyturall, and Possessory; Ancestrell Droyturall is where only right discends from the Ancestor, where the Infant must alledge the esplees in his Ancestor, the Tenant without Plea pleaded may pray, that the Paroll may demur: But if the ancestor was not in possession, (as here) the Infant being the first in which the remainder vested, the Tenant must plead, &c. otherwise where right discends without action, as a Lunatick, aliens and dies; In no actions ancestrell possessory has the Tenant

nant the prayer without plea; at the Common Law, where the Tenant pleaded a Feoffment of the Anceſtor, upon that plea he might pray, &c. but the Stat. of *Glouc'* relieves in coſinage, Ayel, and Beſayel, yet it extends not to other actions; in formdon in diſcender, where the Infant is to recover a limitted eſtate, the Paroll ſhall not demur without plea. In aſſize, or aſſize of Mort d' anceſtor no demurrer for plea, the Jury is to appear the firſt day, which ſhall inquire of circumſtances. By Stat. *W.* 1. *c.* 47. age is taken away in entre upon diſſeſin where freſh ſuit is made: The Infant in all real actions at the Common Law, where he is in by diſcent, ſhall have his Age; unleſſe the action be founded upon his owne wrong, as in *ceſſavit*; not in *Nuper obiit*, becauſe he claimes from the ſame anceſtor; nor in *partitione faciendâ*, becauſe both are in poſſeſſion; nor in Attaint, becauſe of the miſchief of the death of the petty Jury, *W.* 2. *c.* 40. takes away the age of the Vouchee, *in Cui in Vitâ, &c.* if the Paroll ought to demur for non-age, though the tenant will anſwer the Court, *ex officio* ought to ſtay it.

Sir *John Molins case. f.* 5.

King *Edw:* the third Lord, an Abbot meſne, (Tenant is attained of Treaſon, the King grants to Sir I. M. to be held of us, and other chief Lords of the Fee, by the ſervices, &c.) The meſnalty is revived.

Object. The tenure is to be in the grant, by the ſervices thence due, at which time nothing was due to the Meſne. 2. An expreſſe tenure is reſerved to the King, and it cannot be immediately held of many.

Reſ. The words are ſtrong enough to revive the

the Mesnalty, this appears to be the Kings intention; and it is reasonable that the Mesne the offended not, should not be swallowed up: to the second the tenure shall be immediately of the Abbot, mediately of the King.

Wheelers case. f. 6.

The King grants Land to be held by a Rose for all services, it is soccage in Chief; the tenure shall be by a Fealty and a Rose. For *All, &c.* is such as the Law implyes not, but it implyes Fealty.

Ferrers case. f. 7.

A. is barred by plea to his Writ, he shall have the same writ again; if by plea to the action of his Writ he shall have his right Writ; if to the action by Judgment upon Demurrer, Confession, or Verdict, in personall actions he is barred for ever: in reall he may have his recourse to his action of a more high nature. Barre in assise, barres in entre in nature of assise, the higher action must be used. But the barr is not perpetuall, if the meer right be not in him that is barred, as the successor of a Person, who prayed not in aid of the Patron and Ordinary; So of tenant in tail. He that had lost by default before the stat' of W. 2. had no remedy but his writ of right; so in the case where the entry in the *Post* lyes now, before the stat' of *Marlb.*

Spencer's case. f. 9.

Formdon abates for undue summons, the demandant may sue a new writ by Journies accounts.

Resolved. If the writ abate by the fault of the demandant,

mandant, he shall not bring another writ by Journies accounts; otherwise, if by the fault of the Clark or Sheriff, as here. So if *Præcipe* of a Mannor abates for non-tenure of parcell, (it were too hard to be compelled to tell who is tenant of every parcell:) or for jointenancy of the part of the tenant, but not of the demandant himself; the writ must ever be betwixt the same parties, and of the same quantity: Judiciall writs, which never abate for form, are never sued by Journies accounts.

2. The second writ is as it were a continuance of the former: All pleas which relate to the purchase of the writ shall be pleaded from the purchase of the first writ. Costs of the first writ shall be recovered.

Ientleman's case f. 11.

Though the writ of right be directed to the Lord of the Mannor, and the *Justicies* to the sheriff, the sutors are Judges; the reason of the direction is, because the Courts and the profits belong to them; and if either the Lord or sheriffe shall be thought a Judge by force of the Kings writ, which is of record, he must be a Judge of record, and error should lye upon his judgment. 2. Although the King may erect new Courts, he cannot alter the jurisdiction of those established: The sheriff is Judge in redisseisin and the Tourn, the Steward in the Leet and Court of Pipowders; the steward and Marshall in the Marshalsea.

Morice's case. f. 12.

Two jointenants make partition by writ, warranty remains, because they pursued the remedy given by the stat': otherwise of partition without

without writ. Though they are now compellible to make partition, yet they cannot doe it by paroll, the ſtat' extends not to that: If a joint-tenant bring an aſſiſe againſt his companion, he cannot recover in ſeveralty, becauſe it is not according to his demand, nor to the view of the Jurors; and if he might, the warranty is gone.

Caſe of Pardon. f.13.

Burglary was excepted out of the generall pardon of 28. of *El.* the attainder of Burglary is excepted; the offence remains after judgment, and is the ground of it; if the King pardon felony, by this, attainder of felony is not pardoned, becauſe the King miſtakes his grant; but if the King pardons the attainder, and not the felony, it is void, becauſe it appears the felony remains. If felony be made petty treaſon, it is drowned, and by the pardon of petty treaſon, though murder be excepted, yet the murderer of his Maſter is pardoned.

Arundell's caſe, f.14.

Indictment of murder in K. ſtreet in W. the viſne of W. is not certain enough, it ought to be from ſome Pariſh, for W. being a City, it ſhall be intended the Pariſh is leſſe then the City.

Treport's caſe. f.14.

Leſſor and leſſee for life joyne in a leaſe for life, this is the leaſe of the leſſee during his life, and the confirmation of the leſſor; after, the leaſe of the leſſor, and the confirmation of the leſſee, pleaded the leaſe of both, Adj. againſt the pleader. Leſſor and Leſſee for life joyn in a feofment by deed, it is the feofment of the leſſee, and confirmation of the leſſor: If by paroll, the feofment

fesment of the lessor, and surrender of the lessee, the Indenture by which the interest passes is no estoppell.

Eden's case. f.15.

Nothing passes by the Letters patents, shall be tryed where the land is, not where the Letters Patents bear date; for the Letters patents are not traversable, but the effect is, *viz.* whether the Queen has land to grant.

Collier's case. f.16.

A. devises to his daughter for life, the remaind' to his brother, paying 20 s he has the fee, otherwise he might pay &c. and dye without satisfaction; if the payment be appointed to be out of the profits of the land, it is but for life; there cannot be any prejudice that way.

Wyldss case. f.26.

Devise of land to **A.** for life, remaind' to B. in tail, rem' to W. and his wife, and after their decease to their children, having then issue a son and a daughter, A. dyes, and B. without issue, W. and his wife dye, the son dyes having issue a daughter, she shall not have the land, the estate of W. and his wife is but for life, the rem' to the children for life; thus it is in acts executed, and it appears not that it was the intention of the devisor to passe the lands otherwise. Had the estate bin to them and their children, and W. and his wife had no issue at the time, it must be an estate taile, the children cannot there take as immediate devisees; nor in rem', for the devisor had no such meaning: But as here, every child they have at the time of their decease takes for life.

Mich. 27. Sir *Edw. Clere's case. f.* 17.

H. seised in fee of 3. acres held *in capite*, makes a jointure to his wife of 2. acres, and a feofment to the use of his last will of the third, which he devises to A. by whom the pl' claimes. Adj. against the pl'.

Res. 1. Such a feoffor has a qualified use in himself, till his declaration made.

2. If such feoffor devises, according to his power reserved upon the feofment, the estate passes by the feofment, and the use is limited by the will, which is meerly directory; but if he devises the land as owner, the whole passes by the will, which, if the land be held *in capite*, is good for the two parts, but the other third part shall not passe by the feofment.

3. The devise with a relation to the feofment is void for the third part, because a feofment to the use of the last will, and to the use of A. and his heires, is all one.

4. In this case the will is void for the whole, for having disposed 2. acres to his wife as owner of the land, he cannot devise the third acre: therfore the devise enures to a limitation of use.

Packman's case. 18.

The Ordinary commits administration to a stranger, the next of blood sues a Citation, the administrator sels the goods, the administration is revoked, and committed to the next of blood, he brings an action of the case against the vendee, Adj. against the pl'. The Citation depending, the property of the goods was in the first administrator: otherwise in an appeal, that suspends the first sentence: So if the administrator upon condition grants the goods, the condicion

condicion is broken; otherwise where the administration is void.

Gregory's case. f. 19.

Error brought upon a recovery in the Court of *Ludlow*, upon the stat' 4. & 5. P. & M. that no man shall weave woollen cloaths that has not exercised the trade, &c. for seven years, upon pain, &c. to be recovered in any Court of Record.

Error 1. This stat' is taken away by the 5. *El.* c. 4. Not allowed, they are both in the affirmative.

2. This recovery was by plaint where it ought to be by information, or orginall, by stat. 18. *El.* 3. By Court of Record, for excellency the foure Courts of *Westminster* are meant, and because the Atturney generall may be ready to reply upon a speciall plee pleaded *.

* *Judgement reversed for those two Errors.*

Michelbornes case. f. 20.

Judgement in the Marshall-sea, in action on the case for Trover and Conversion, where neither of the parties were of the hostell, reversed by Error; by stat. *Artic. super Cart.* This Court is not to hold pleas, but in trespasse within the verge, where one is of the hostell, in Contracts and Covenants within the hostell, where both are of the hostell.

Butler and Goodals case. f. 21.

If the Person be within the Parish, and there be a personage house, if he abide any where else, he is punishable for non-residence, im-

prisonment or removing to take Physic without covin excuses him.

Ambrosia Gorges case. f. 22.

Vicount *Binden* seised in fee, *in capite*, has issue D. married to Sir A. G. who has issue A. a daughter, and dyes: the Viscount dyes, A. being heire apparant to her Father is married to F. who dyes, A. under the years of marriage, Sir A. G. has issue a son, A. shall be in ward to the Queen.

Res. 1. Though a daughter is not such heire as may ever continue so, yet for the time she continues, she shall not be in ward to any but her Father.

2. When Sir G. A. has issue a son A. shall be in ward to the Queen, the son is now his heir apparant.

3. The Queen shall have the wardship, notwithstanding the marriage, because under the years of marriage, and not compleat till her consent, which is prevented by the death of her husband; the Grand-father if the father dyes in his life time, shall not have the custody of the son his heir apparant, but the King or other Lord, the stat. of the *Prerog.* c. 6. is in affirmance of the Common Law.

Pawlet the Marquesse of Winchesters case. f. 23.

Devise of Lands and Goods is indeavoured to be proved in the Court *Christian*; and upon suggestion that the devisor was not *compos mentis*; *viz.* that he had not a disposing understanding, a generall Prohibition was granted; not speciall for the Land only, because the will was intire

tuire, and the tryall whether he were of ſound underſtanding as to the Lands, belongs to the Kings Courts, and if the will be ſuffered to be proved for the goods, the Court *Chriſtian* would prevent the Court of the King.

Reades Caſe. f. 24.

Treſpaſs, the Defendant makes his title becauſe A. was ſeiſed in fee and leaſed to him, the Plaintife makes title by diſcent, and traverſes the leaſe, good, the ſeiſin of A. and the diſcent to the Pl. may be both true, ſo the leaſe is the moſt materiall.

Helyars caſe. f. 24.

In replevin in the Defendant avowes, becauſe of the grant of a term by A. to S. under whom he claimes; the Plaintife pleads in barr, that A. took for husband, one who granted to the Plaintife, and traverſes the grant to the defendant. Not good, he that claimes by the firſt aſſignment ſhall not traverſe the ſecond, but on the contrary, &c. but the firſt feoffee may traverſe the latter feoffment, not the laſt the former. The fee may be gained by diſſeiſin after the firſt feoffment, the leaſe for years cannot.

Ruddocks caſe. f. 25.

Replevin againſt ſix, the Plaintife recovers in Error, the Pl. pleads the releaſe of one, it hurts not the others.

Reſ. Where diverſe are to recover a thing perſonall, the releaſe or default of one barrs the reſt; not when they are to diſcharge themſelves of the perſonalty, when they are forced to joyn,

as in Error or attaint, otherwise in out-lary they need not joyn. There is no joynt interest where they joyn to discharge themselves, though their dammages shall be restored them. It is to be intended they payed them out of their severall goods. There may be some doubt of it, had the execution bin of the goods which they might possess joyntly, or in common.

Sharps case. f. 26.

I demise my house to you as long as I live, paying 20 l. is but a lease at will, there wants livery, or words equivalent, as enter into it, &c.

Case of Souldiers. f. 27.

Statutes 7 *Hen.* 7. 1. 3 *Hen.* 8. c. 5. against run-away Souldiers perpetuall, the King includes the succession.

The Vicount Montagues case. Ten. Capite.

Vicount M. with the licence of the Qu. suffers a recovery to B. and D. to uses, with power of revocation, and limitation of others, he revokes and limits new uses, no fine shall be to the Qu. for alienation.

Resol. 1. Licence to alien to A. alienation is to the use of B no fine, the use is executed by the stat. which can wrong no man. The provision in the stat. that fines shall be paid for executing uses, is to be understood, where uses are raised by Covenant, recovery, or feoffment, no licence for alienation being had.

2. Though by revocation and limitation of

of uses a new, the Kings Tenant is changed, no fine is due, all rises out of the estate of B. and D. which was raised upon the licence.

Greens case. f. 29.

Tenant for life of a Mannor, to which is an advowson appendant, presents A. who at the suit of the Tenant for life, is deprived for not reading the Articles, no notice given to the Patron, the Queen present for laps; Tenant for life, and his incumbent dys, he in the remainder presents the Pl. who recovers.

1. Though the Patron be party to the suit, yet according to the stat. notice must be given by the ordinary, else no laps incurrs. The notice must be speciall, and contain the cause, and that he is deprived, generall notice that he reads not the Articles is not enough.

2. The Church is void *ipso facto*, by the stat. without deprivation.

3. If the Queen presents because of laps, where she is Patron, it is void, more strongly where she has no title.

4. The Patron by presentation of him, who reads not the Articles, is not put to his *Quare Imped.* nor by collation, but by collation he that has right to collate, is out of possession.

5. The Queen may be put out of possession of an advowson, because it is a thing transitory; not forced to her Writ of right of advowson. Her inheritance cannot be gained by wrong.

Boothies case. f. 30.

Condicion of an obligation, is, to deliver a Bond to the obligee, and acknowledge satisfaction, it shall be performed in convenient

time; Acts transitory to be done to the obligee though a certain place be appointed: shall be done in convenient time. So of acts in their nature locall, if the concurrence of the obligor and obligee be required; which is not required in this case, where the act is locall and concurrence necessary, the obligor has his life time, &c. if he be not hastened by request. If the concurrence of the obligor and a stranger be necessary, the performance must be in convenient time; if of the obligee and a stranger it must be hastened by request. If the act to be done be not to the benefit of the obligee, but to be done by the labour of the obligor or a stranger, he has his life time.

Fitz-williams case, f. 32.

Husband and Wife Tenants for life, and to the heires of the body of the Husband. The Husband alone is vouched in a common recovery, the tayle is barred.

Ref. 2. Tenant in Taile suffers a common recovery to his own use for life, the remainder to his Wife, divers remainders over, with a power of revocation, and limitation of new uses, by any such writings; he revokes all the remainders, except that to his Wife, and by the same deed limits new uses, it is good, by any such writing shall be intended, the same or any such: It may be done by the same deed. It takes effect. 1. As revocation. 2. By limitation of new uses, there are but two times concuring in one instant.

The Bishop of Bathes case. f. 34.

The Bishop of B. leases, to E. and R. her son

son for 60 years. Proviso if they dye within the term, it shall be lawfull for the Bishop, &c. to re-enter, E. dyes, The successor leases for 60 years, when by, or after death, surrender, &c. of R. it shall become void. Two questions were made. 1. Whether the second lease be good. 2. If good, when it shall begin.

Obj. It is not good. 1. The beginning is upon one of the three contingences, surrender, death, or forfeiture, so incertaine. 2. It cannot begin by the death of the first lessee, The lease is not void by his death before entry.

Resol. 1. No necessity that the beginning of a lease for years should be certaine at the time of the lease made; If it may be reduced to a certainty at the time of the beginning it is enough, and the continuance of the term must be certain, either by a certaine numeration of years, or by reference to a certainty; as untill S. be come of full age, he being then nine years old, is good for 11 years, untill an infant in his mothers belly becomes of full age refers to no expresse certainty. Lease till 20 l. be levied out of the profits of the Land is but at will, or by matter *ex post facto*, as for so many years as S. shall name is good.

2. The beginning of the second lease shall be taken more strongly against the Lessor, and although the first lease cannot determin by the death, without the re-entry, and although there were no re entry here; yet by the force of the words after the death, when the first lease is determined by effluxion of time, the second shall begin. The l. sees intrest is present, which shall vest in possession by any of those wayes which shall first happen.

Dean and Chapter of Worcesters case. f. 37.

Dean and Chapter seised of a Mannor in fee, in which were copyholds grantable for three lives, the rent being 8 s. 6 d. payable at foure times the year, with Heriot, grants a Copyhold to A. for the life of three, reserving 8 s. 6 d. at one payment yearly, not within the stat. 13 *Eliz.*

Res. 1. The grant is good, though occupancy may happen, it is no inconvenience, the occupant is punishable in wast.

2. The grant of a Copyhold is a demise by the intent of the stat. in Law, it is a lease at will.

3. The omission of the Heriot is nothing, The annuall rent is reserved.

4. The reservation is good; the word yearly in the stat. makes a difference betwixt this, and the L. *Mountioyes* Case.

Bellamies case. 38.

Lease upon condicion that the lessee shall not alien without licence, the assignee pleads the assignment was with licence, but showes no deed of licence, he needs not. 1. He claimes not by it. 2. The licence is out of the provision of the lessor, not of the institution of the Law. 3. Because it was executed.

Henry Finches case. f. 39.

Grant of rent out of divers mannors, and messuages in the Parishes of E. and W. or elsewhere belonging to the said mannors; an acre, not parcell, of any of them is not charged; elsewhere,

where, charges not more Land then what is parcell of those mannors, it charges all the parcels of them out of those Parishes.

Sir *Anthony Mildmayes case. f.* 40.

Ref. 1. Perpetuities are against the rules and policy of the Common Law.

2. *Vide.* r. 1. *Corbets* Case.

3. Condicion that the donee in Tail suffers not a common recovery is void; that power is given by the Law. 4. Voyd that his estate shall cease if he go about. For indeavoring, not followed by an effect, cannot hurt, many ambiguities would arise, the Law not defining what it is; It is so incertaine, it is not issuable.

Blakes case. f. 43.

Accord, with satisfaction, is a good barr in a Writ of Covenant, the duty accrues not merely by the Deed, but by act subsequent together with it; so in attaint, which is not founded upon the Record alone, but upon the perjury also. v 4 Co. 124.

Higgens case. f. 44.

In debt, the Defendant pleades the Plaintife has recovered upon the same Bond; which judgement is removed by Error into the Kings Bench, not reversed, good, the judgement takes away the strength of the Bond: not so of judgement by consent, which is but an obligation recorded. 2. Allowing one, the actions would be infinite, the other depending: and the Defendant being to be amerced in every judgement, should be infinitely amerced. It was no

plea

plea anciently, where the obligations were always to be cancelled, otherwise now.

Dowdales case. f. 46.

Debt against Executors, Defendant pleads fully admin. Plaintife replies, he has assets in E. the jury finds assets in I.

Res. 1. When the place is materiall, the point in issue cannot be found in another place.

2. When it is named but for conformity, the Jury may find the thing in another County. 3. And all things locall materiall in a generall issue, &c. 4. And so by a mean shall try things locall in another County; as where Land in one County, is exchanged for Land in another; not in case of felony, there, must be no supposition of another place. 5. The finding assets is enough, in I. is surplusage. Things done beyond Sea shall be tryed here, if the foundation of the action be here.

Boswels case. f. 48.

At the Common Law by admission and institution, the usurper gaines the inheritance of the advowson; because the incumbent is in by a judiciall act; the Bishop being so highly trusted, shall not be supposed to wrong the Patron. 2. The incumbent was not to be removed by *Quare Imp.* if not in the Kings Case. *Vide Greens* Case 29. *res.* 4. without respect of infancy, &c. by W. 2. c. 5. a possessory action is given the infant to recover his advowson. If an usurpation be against him, where the advowson is append. at his full age he makes a feoffment of the mannor, the advowson passes not.

If the Clerk come in by course of Law, it gains

ving not the inheritance against the rightfull Patron. The King is not to recover dammages by this stat. he is not within the first branch. If the time of six months passes: nor within the second that depends upon the first; yet shall he Count to dammages. The incumbent not named in the Writ cannot be removed, unlesse he be admited hanging the Writ. Nor dos laps incurre where the Bishop is named in it: be the presentee hanging the Writ in by the rightfull patron or not, he that recovers in *Quare Imped.* shall have a generall Writ to the Bishop, and then they shall try their rights.

Isabelle Countesse of Rutlands case. f. 52.

Res. 1. A Countes though she cannot sit in the *Parliament*, because of her sex; cannot be arrested, she is a Peer of the Realm and shall be tryed as a Peer.

2. None of the Nobility can be examined by the stat. 5 *Hen.* 4. 8. Nobility by discent shall be tryed by record; by marriage, by the Country; dignity acquired by marriage, may be lost by marrying ignobly, not dignity by discent.

3. The arrest by force of the *Cap. ad satisfac.* Justifiable by the Sergeants, *Capias* lyes against a countes in some cases, and officers are not to argue the power of the Court, but it is wrongfull here, being done by a feigned action entred in the Counter.

Lord *Chandos case. f.* 55.

The King grants to B. in Tail and in consideration of the surrender of the *Letters Patents* by force of which the King is seised in fee, grants

grants to him and his Wife, and to the heirs of B. The recitall that the King was seised in fee, was but a collection of the Kings, no part of the consideration, nor any suggestion of the party; when he grants in possession, having only a reversion that passes, he is not deceived, because it is less then he intended.

Bredimans case. f.56.

Lessee for years, payes rent sec, it is not seisin required in assise against the Tenant of the frank Tenant. 1. Because of the imbecillity of his estate, he cannot falsify at the Common Law. 2. He cannot give seisin which he has not, therefore no Precipe can lye against him. He may take seisin to the advantage of the Tenant of the frank Tenement; seisin of rent sec by a disseisor is lawfull. The first payment which animates this dry rent must be by the Tenant of the frank Tenement; in this case the grant being by devise, no Writ of annuity can lye: Tenant of the frank tenement must attorn to the grant of such rent; therefore he must render seisin, not the baily, without expresse command; Tenant avowes the payment as his by the hands of his Tenant at will, good seisin; the King has a rent out of a Town, payable by all the inhabitants, seisin alleged generally is well alleged.

Gatewards case. f.59.

Common, by reason of commorancie is against Law. 1. There are but foure kinds of common, append. appurtenent, in grose, and because of vicinage. 2. It appears not the inhabitant has any estate in the house, what interest then can he claim in the common? 3. Cu-

stō

ought to extend to things certain, this is incertain, and transitory. 4. This common cannot extinguish by release, or otherwise, which is against the nature of Common. 5. There is no action for it. 6. The particular Tenants ought to prescribe in the name of him that has the fee, which cannot be here. 7. No improvement in this Case can be of wasts; Inhabitants may prescribe to be discharged in their own lands, and to an easment in the soile of another. Copyholder may have common in the demesnes of the mannor, he must allege the Custō. That every Tenant, &c. not Inhabitant, Prescription is intended to begin by grant, not Custō. So of the Custō, that every Father of a Family, &c.

Catesbyes case. f. 61.

The six months to incur laps, accountable, according to the Calendar, not 28 dayes; the stat. speaks in the singular number, *Tempus semestre*, which is half a year. 2. The computation of the Church is according to the Calendar; Therefore it is to be taken according to the matter subject; if the year and half be passed, the Title devolves to the King, is common in our books, &c.

Sir *Moyl Finches case.*

Lady M. Tenant for life of the mannor of B. the reversion to S. and F. his Wife, S. and F. together with D. levy a fine to A. of the demesnes, who grants and renders to D. for 50 years, rendring rent, the reversion to S. and F. with a proviso in the indentures, that S. and F. &c. may enter to hold Courts; averred those demesnes were known by the name of the Mannor

of

of B: S. and his Wife levy a fine of all the Wives Lands in K. except the Mannor of B. to the use of the Wife for life, the remainder to Sir M. F: D. makes his son Executor being but three years old, administration is committed to T. after S. and his VVife levy a fine of the mannor of B. with sundry acres enough to passe the demesnes to the use of S. and F. &c. unill S. with the assent of F. by writing, &c. declare other uses, and then to them. T. demises to P. for 10 years, Lady M. dyes, P. enters, S. with F. limits new uses to G who outs P and enfeoffs to the use of F. remainder to H. F. P. re-enters, F. dyes, H. F. distrains for rent behind.

Resol. 1. By the grant and render of the Demesnes the Mannor is destroyed, though done in one instant, because in that instant the Demesnes and services were severed by act of the Party; otherwise, of act in Law, as partition: So of advowson appendant, severed by partition, by which many Mannors may be made of one.

2. B. is excepted by the name of Mannor. 1. This was the intent of the Parties. 2 Exceptions of miss-naming are not favoured in the Law. 3. In many cases the name, by repute, is sufficient: as remainder to a bastard by the name of the son of I. the reputation of a convenient time is enough, as it is here, B. was a mannor time out of; &c. and when the fine is levied, continues its name. So that this reputation upon such ground is more valid, such reputation is allowed in writs amicable or friendly, which are used in conveiances, not in writs adversary; also the Lady M. holds the mannor for her life, which is enough to support the name.

3. The

3. The leaſe by the adminiſtrator during the minority is good, his adminiſtration is generall, not ſpeciall, to the benefit of the infant, however it is good for the time of the adminiſtration.

4. P. in the life of M. has but a future term, ſo that as to the intereſt upon the later fine there can be no atturnment; after the death of M. by entrie of the Leſſee, the reverſion is in S. and F. without atturnment, which cannot be by him who has but a future intereſt, and needs not to paſſe a reverſion by Fine: When atturnment cannot be to the Conuſee, the Law gives him the ſame advantages without it, as fine to a uſe. P. cannot atturn expreſly, yet his entrie is an atturnment in Law: So of the Lunatick, he that has ſuch future intereſt, or leaſe, may ſurrender in Law.

Lord *Darcies caſe. f.*70.

No tender needs for the ſingle Value, be the Heir male, or female, but the Female forfeits not the double Value: By the Statute of *Merton*, if the Heir marry at 14. forfeiture is given; at which age the Female was out of ward. By *W.*1. c. 22. it is provided that the Lord have two yeers to tender, but no double value given, nor ſingle, without tender: If he waves the two years, he ſhall have the ſingle Value without tender.

Burrels caſe. f. 72.

*Reſol.*1. The Father leaſes by fraud, and dyes; the Son knowing of it, or not, ſels the Land, the Vendee ſhall avoid it.

2. So

2. So the Father leases to the Son, who assignes fraudulently, then sels the Land.

Sir *Drue Druries case. f.* 73.

Edw. the 1. grants to the town of Y. That all which shall be born there, though they hold *in Capite*, may marry, according to the liberties of the Towne aforesaid; D. dyes seised of a house, parcel of a Monastery dissolved in the time of H. 8. held *in Capite*; the King grants the wardship of his Son, and after Knights him, the pl. sues for the value of his Marriage.

The Charter discharges not the defendant: 1. It is according to the liberties of the Town, which are not shown. 2. It cannot extend to a tenure created in the time of H. 8. 3. It is not shown that the def. was born there.

Resol. If the Heir in ward be Knighted, his body is out of Ward; the Law now intends, he is able to perform the service of a Knight, otherwise if he were ennobled.

2. By the death of the Tenant the value of the Marriage is vested in the Lord; and Knighting him after cannot devest it, more than if he had come of age.

3. Knighthood in the life of the Ancestor discharges Wardship.

4. If Knighting the Ward could devest the Wardship, it would not a little prejudice the King, and the Subject; no man would buy the Kings Wardes.

5. After tender, and refusall, if the Heir be Knighted, and then Marries, he forfeits not the double value, because he is out of Ward; but the Lord is to have the value immediately.

Sir

Sir *Georg Curſons f.* 75.

L. Tenant in Chief, having iſſue a Son, Covenants to ſtand ſeiſed to the uſe of his Neece; the Son dyes, the King ſhall not have primer ſeiſin.

Reſol. 1. To enfeoff the heir apparent, was plain colluſion within the ſtat' of *Marlb.* and averable if others were enfeoffed; not where the reverſion, or particular eſtate is limited to a ſtranger, not in a deviſe.

2. Or otherwiſe, to diſpoſe in ſtat' 32. H. 8. relates onely to Wills; for, before the Statute, any man might diſpoſe of his Lands by act executed.

3. The clauſe in that ſtat', which ſaves primer ſeiſin to the King, relates only to acts executed; for, without it, the King was aſſured of the third part not deviſed; but, without it, he could not have primer ſeiſin of any part conveyed by act executed: by this, as to the three caſes of advancing his Wife, &c. Acts are in equipage with Wills.

4. The Grandfather conveys to the Son in the life of the Father, it is out of the ſtat' 32. H. 8. ſo of a gift to a collaterall kinſman, not heir apparent.

Bullens caſe. f. 77.

The Lord may have a certain ſumme of all within his Leet for capitage, which might be granted at the firſt, when the Lord purchaſed the Leet in eaſe of the Tenants: Iſſue, whether the pl. be a chief pledge, found by ſpeciall virdict, he was returned for a chief pledg, and amerced for his default: By this virdict he ſeems to be no chief pledge.

The

The Lord of *Aburgavennie's case. f. 78.*

A. and B. Joyntenants for life, Judgement against A. in debt, who releases to B. B. dyes, the Land is bound, A. cannot discharge the execution by his own act; nor any charge, though B. was in by the first Lessor, notwithstanding the death of whom, and the entry of him, in reversion, during the life of A. the Land is charged.

Sir *Edw: Phitton's case. f. 79.*

Sir E. P. dyes out-lawed, all out-lawries are pardoned by the 43. of *Eliz.* In which is a proviso, that they shall not be allowed till the outlaw satisfie the party.

1. The Executors of E. P. satisfie the party, and plead the Pardon, they may.

Resol. 2. The stat' has it untill the person out-lawed satisfie, &c. This is such an interest, which, though he be dead, the benefit of it is derived unto his Executors.

3. Because no Writ lyes against the Executors, they shall come in without processe, and Plead.

LIB.

Lib. VII.

Calvin's case. f. 1.

R. C. Son and Heir of the Lord *Calvin* of *Colcrosse* in *Scotland*, demands, &c. in assize; the Def. pleades, the Pl. is an alien: And that in the third of his Majesties reigne of *England, &c.* he was born at *E.* within the Realm of *Scotland*, within the liegeance of the King of his Realm of *Scotland*, and out of the ligeance of the King of his Realm of *England, &c.*

Five things fell into consideration in this Case.

1. The first was Ligeance, which is the faithfull obedience due from the Subject to his Soveraign, and only to him; It doth not begin by the Oath in the Leet. This Ligeance is to be referred to the King, not to the Kingdome. That of a Subject borne is naturall, absolute, and indefinite; the acquisite and locall are far lesse excellent: It is due to the naturall person of the King, for the King holds the Kingdome by Birth-right inherent, by descent from the Blood-royall: Contrary to *Watson* and *Clark*, Seminary Priests. He is absolutely there by King. Coronation is but a royall ornament, and outward solemnization of the descent. That Homage or Ligeance was due to the Crown, and that if the King demeane not himselfe by reason in the right of his Crown, his Lieges are bound by oath to remove him; or seeing he could not

be

be reformed by ſuit of Law, to doe it by the Sword, and to governe in aid of him. Theſe damnable and damned opinions were condemned by two Parliaments. The Body Politique is becauſe of His Majeſty, &c. *Stat.* 11. *H.* 7. 2 *E.* 6. the Subjects are bound by their Ligeance to goe with the King in his Wars, as well within the Realmes as without, his Subjects may be commanded to make good their ſwords againſt either Rebell or Enemie.

2. Of the Lawes. Faith of the Subject is due unto the King by the law of nature, which is part of the law of the Land, before any Municipall or Judiciall law, and immutable: It had been in vaine to have preſcribed lawes to any but to ſuch as ought obedience and faith before. The Parliament cannot take away that protection which the law of nature being indelible gives the Subject; after Treaſon and Attainder the King may protect and pardon him; and the Ligeance of the Subject is of as great extent & latitude as the royal power and protection of the King. The 23. of *H.* 6. enacts, That no man ſhall ſerve the King as Sheriffe above one yeare, and that notwithſtanding any *Non-obſtant*: Agreed, the King may diſpence with it; for the Act could not bar the King of the ſervice of his Subject, which the law of nature did give unto him. The law of nature then being parcell of the law of *England*, and ſubjection due by that, *Calvin* is no alien.

3. The Kingdomes; and theſe are combined, 1. under the ſame naturall liege Lord; 2. the ſame ligeance by nature; 3. the ſame protection: Yet the Kingdomes, Government and Lawes, Parliaments, and Nobility, are diſtinct and ſeverall.

4. Con-

4. Concerning Aliens, C. is borne under the naturall Ligeance due by the law of nature, to a ſubject: 2. And he that by his birth cannot be an alien to the King, ſhall not be an alien to a ſubject: Peace and War belong to the King, and the King without his ſubjects, may grant Letters of ſafe conduct and denization: This high point of Prerogative Royall cannot be conferred upon any other; it is a right of Majeſty, and amongſt the badges of the ſupreme power.

5. The inconveniences, and thoſe are no inconveniences: 1. The Poſtnate is ſubject to the Lawes and Taxes of England: 2. And the inconvenience that the Kingdomes may be divided for want of iſſue royall, is but a dreame.

Bulwer's caſe. f. 1.

H. recovers againſt the pl. in the Common Pleas, and dyes, the def. in the name of H. outlawes the pl. who layes his Action upon the caſe in the County of N. where the firſt Action was brought, and recovers.

Reſ. When matter in one County depends upon matter in another, the pl. may chooſe his County, if it be not in caſes where the def. upon generall iſſue pleaded, may be prejudiced in his Tryall; as two conſpire in one County, and indict in another, election; if the indictment was not by them, action ſhall be where the conſpiracy was: ſo where the menace was, not where the receſſion of my tenants is; election, where the action is founded upon two things materiall, and traverſable in two ſeverall counties: Annuity, the action ſhall be where the grant was, not where the payment is: Robbery, an appeal of felony may be any where, where

the

the goods come; an appeal of robbery, ond where it was committed. Lease for years in one County, of land in another, debt must be brought where the lease was made, waste where the land lyes; every action which concerns the life of man, where the offence was committed; every issue which arises upon an action in which the land shall be recovered, where the land lyes, as in right of ward, of land, or body, in intrusion of ward, forfeiture of marriage, value of marriage, and *Quare imped.* Ravishment of ward shall be brought where done, and *Quare non admisit*, where the refusall was; *Quare imped* of a Prebend, where the Cathedrall is, the induction must be there: before the stat' 7 R. 2. action for land in divers counties, or in common in one append' to land in another, should be brought by severall writs in both counties, now it shall be *in confinio comitatuum. Per quæ servitia*, where the note of the fine is levied.

Sir Miles Corbet's case. f. 5.

Custome of Common called Shack good.

Cases upon the stat' 13. E. 1. of Wincheſter.

Scudhills case. Robbery in the house, not within the stat'. 1. Every man must secure his own house. 2. A stranger may not enter to guard it. It must be such a robbery as the Country may take notice of, the party need not give them notice.

Ashpole's case. Robbery after sun set, and before night, within the stat', it is part of the day in law.

Melborn's case. Not robbery in the night, so before

before this stat', a murderer escapes in the night, the Town was not to answer; now to be amerced. By 27. of *El.* the party must give notice as soon as may be, if any be taken, the Hundred is excusable.

The Earl of Bedfords case. f. 7.

Tenant in tail leases for years, he dyes, the King, or other guardian may avoid it; so of a lease by a Bishop: So the infant before the entry of the guardian leases, but the Lord by escheat shall not avoid it.

2. This avoydance holds but during the Lords interest, after the heir may make it good: where he that has a particular estate, avoids an act in the whole, after his interest determined it cannot be made good; as a woman is indowed of an appropriation, who presents; a Person avoids a lease, or the husband his wives fine.

Ughtreds case. f. 9.

Marquesse of *Winch.* grants the Captainship of a Fort, and for the exercising the said office, and for finding a Gunner, and six souldiers, grants him an annuity of 32 l. the year, the pl' brings a writ of annuity.

Except. 1. It appears not by the Count that the Marquesse had power to grant the office: not allowed.

2. The pl' avers not the exercising the office; not allowed. It is a condicion subsequent, and this must come of the other part; if there were any consideration of an act to be done by him, he must shew performance, this amounts to a condicion precedent, as in debt for a salary; but where the remedy is equall, on the one side for the mony, on the other, for the act to be

done, the Count need not show; as a covenant to serve, and a covenant to pay mony: but where interest vests, and is to devest upon non-performance, if it appear to the Court that the action is not to be maintained without performance, it must be shown: As an Abbot grants an annuity, the pl' in action against his successor must show he has given counsell to the use of the house.

Englefiel'ds case, f. 11.

Sir F.E. covenants to stand seised to himself for life, the remaind' to his Nephew; and if he prove unthrifty, provides it shall be void, upon tender of a ring by himself: he is attainted of treason, the Queen leases to F. for 40 years, the attainder is confirmed by stat', and by another stat' enacted, that every one that has any patent of land, of any person attainted, shall exhibite it into the Exchequer within two years to be inrolled. B. authorised by the Queen by Letters Patents, in the name of the Qu. tenders the ring in the life of F.E. intrusion is brought.

Res. 1. The Queen tenant for the life of another leases for years, without recitall of her own estate, good; this is lesse then her estate, here is neither wrong nor mistake: so of a grant of her whole estate.

2. The condic' is given to the Qu. *Object.* The intent is the substance of the condic', that, as unseparable cannot be transferred from Sir F.E. 2. Naturall affection is to be the Judg, whether the Nephew deserves that the use should be revoked. The condicion can no more be transferred over, then naturall affection can; naturall affection created the conveyance, and is to be the Judge of its determination. 3. Be it so, that the

the benefit of this collaterall condicion be given to the Queen, the performance is not. To the 2. and 3. answered, the condicion is the substance, the rest but a flourish; nor is it a condic' inseparable, any man may as well tender a ring as F.E. And to the third, the performance is given as incident to the condicion.

Object. 4. The estate of F.E. not subject to the condic', here the use and possession are not separated; nor he seised according to the 27 H. 8. but of his estate for life, which is parcell of his old estate, and above the condicion, therefore the lease not avoidable in the life of F.E.

Resp. F.E. is seised by limitation of use, and the lease shall be avoided.

Object. 5. The Queen seised for anothers life, having leased, shall not defeat it by her own act after, as the morgageor confirms the lease and enters.

Resp. She shall avoid it, her grant shall not have a double force, 1. To lease, 2. To suspend the condic': when the King has two rights, he shall not passe them both without speciall words.

Object. 6. The tender ought to be found by office, as an act in fact; if the Certificate be false, it is not traversable, so no remedy.

Resp. Certificates which inform the Queen of her Title, not in nature of tryals, are traversable: by tender the uses vanish, and by stat' 35 H. 8. the land vests in the Queen.

Object 7. The conveyance void, because not inrolled within two years, according to the stat' so F.E. seised in fee, and the lease unavoidable.

Resp. It was tendred to be inrolled within two years, which is all the stat' requires.

The case of Swans. f. 15.

The game of Swans in a common River seised into the Kings hands upon office, &c. I. pleads, the Abbot of A. &c. injoyed the whole profit of all the Swans haunting in the Mere aforesaid, and makes title, and prayes *Ouster le main.*

All the white swans in a common river, which have gained their naturall liberty, belong to the King, and are Fowl royall; if they escape into the common river, the subject may retake them by fresh pursuit; the Cignets are to be shared among the owners of the swans: upon the *Thames* the owner of the land shall have the third by custom: Swan-marks are by the Kings grant, or prescription, and may be granted over: he that has them must have 5 l. yearly by stat' 22. E. 4. Prescription may be to wild swans, not as here, but that the Abbot &c. used to take them, adj. against Y.

Sir *Tho. Cecills case. f. 18.*

C. enters bond to performe covenants to the King; he showes in the Eschequer chamber matter of equity to discharge himself, according to 33. H. 8. c. 39.

Resolv. 1. The branch of the stat' which gives this liberty, extends to debts at common Law too, as giving a more speedy remedy for them.

The proviso of equall charging subjects lands to the Kings debts, is generall of all.

2. The Court of Eschequer chamber in this case may decree upon an English bill; although Processe in the Eschequer was at the common law, to this purpose they are a Court.

3. Obligation to perform covenants, after covenants broken is within the stat'.

Lord

Lord ch. Iust. Anderson's case. f. 21.

Tenant in tail indebted to S. S. is attainted; tenant in tail dyes, his issue aliens without fraud, the King shall not extend those lands by stat' 33. H. 8.

Ref. 1. At the common law lands in the hands of issue in tail could not be extended for the Kings debt, he was bound by stat' W. 2.

2. By this stat' such lands may be extended for the Kings debt, by Judgment &c. or specialty, not else.

3. In this case the Lands are not to be extended in the hands of the purchaser.

4. Debt due to the subject, and forfeited to the King, is not within the stat', it must be originally due.

Butt's case. f. 23.

B. seised of B. acre in fee, and possessed of W. acre for years, grants a rent charge to A. for life out of both of them, he distreins and avowes in W. good.

Ref. 1. Lessee for years makes such a grant, the grantee has but a chattell.

2. The whole rent issues out of B. acre, as an estate of franktenement, it cannot issue out of W. acre, nor as a franktenement out of one, and a chattell out of another, because intire; nor can it be two rents; therefore the acceptance of a lease of W. suspends it not, and in assise the view shall be only of B.

3. Yet is W. charged with the distresse: rent granted out of three acres, clause of distresse in one, this is a rent seck, yet he may distrain: so rent to two, clause of distresse to one. Rent may be charge and seck at severall times, as a grant

in fee, distresse for life; if the clause of distresse be for years, it is seek in the whole, because the franktenement is seek.

The avowry is insufficient, 1. It says the rent issues out of W. acre, and it issues out of B. though the pl' has disclosed the truth in his ples in bar, this salves not the matter of substance in the avowry. 2. He derives the rent out of W. by vertue of which he was seised for life, which is repugnant, to have a franktenement out of a chattell.

Halls case. f.25.

Quare imped. against the Bishop and Incumbent, without naming the Patron, abates: 1. No reason the Patron should lose his Patronage, and not be made a party, as he may be. 2. The Incumbent at the Common Law could not plead to the Patronage, no reason then that he that can should be omitted; now by stat' 25 E. 3. c. 7. the Incumbent may plead, &c. he may counterplead the Kings title, and by equity plead against a common person; against the King after his induction, against a common person after his Institution: where the patronage is not recoverable, the patron need not be named; as where the King is in the case, the *Quare imped.* must be against the Incumbent alone, or against him and the ordinary: so a Bishop disturbs and dyes, it shall be against the Incumbent onely; if the Patron be named and dye, if the writ abates not, he shall be out of possession; and if it abate, the wrong is dispunishable; and if it doe not abate, and the Patron be out of possession, he may remedy himself by his writ of right, therefore the writ shall stand.

Sir

Sir *Hugh Portmans case. f.* 27.

If the Plaintife in *Quare Imp.* after appearance be non-suited, or discontinue, or be Knighted, hanging the writ, it is peremptory, because his own act; not so if it abate for want of form, or for misframing, this may be the Clarks fault.

Baskervill's case. f. 28.

Title devolved to the King to present by laps, the patron presents A. who dyes, the King has lost his presentation; otherwise the King might present strangers one after another, and disinherit upon the matter the patron, the time is part of the Kings Title, the rule *nullum tempus*, &c. intendable where the title is permanent.

Maunds case. f. 28.

Grantee of rent charge to him and his assignes *pro consilio impendendo*, for his counsell, grants it over to A. who demands upon the land, distrains and avowes.

Res. 1. The rent in the case by the words of the grant may be granted over, *modus & conventio vincunt legem.* 2. In a re-entre, or *nomine pœnæ*, the demand must be at the day; not in distresse, that is but a way to come by the rent. 3. As to assise for rent seck, a demand after the day is sufficient, if the grantor was ready to pay at the day; the demand must be from his person upon the Land, or at the next day of payment.

Discontinuance of Proces by the Queens death. f. 29.

Upon generall re-ſummons the originall and the iſſue are revived, not the mean Proces, Voucher, or Garniſhment: ſpeciall re-ſummons revives all; not in ayd prayed, or where verdict is given, and the King dyes before the day in bank; ſummons lay not, therefore re-ſummons cannot be; in caſe of verdict, he for whom it was given upon *Scire fac'* may have judgement. Now by ſtat. 1. *Edw.* 6. No Action, Suit, Bill or Plaint ſhall be diſcontinued, if they be returned; becauſe the ſtat. ſayes depending, if an appeal be delivered within a year, and the King dyes, of neceſſity the Plaintife ſhall have a Certiorary and Re-attachment. So of formdon brought within a year againſt the Pernor of the profits. The office of Sheriffes at will, not of inheritance, determines by the Kings death; ſuits depending in inferiour Courts are out of the ſtat. the King dyes after information preferred, only the information ſtands. 1. Becauſe that is a record for the King, and ſhall not abate. 2. Informations upon certain ſtat. have a time prefixt, the Kings originall falls with his death; one pleads to an inditement, the King dyes, he muſt plead again; if convict, judgement may be given in the time of the next King, not before.

Caſe of a Fine levied by the King Tenant in Tail. f. 32.

The King Tenant in Tail by gift to his Anceſtor, who was a ſubject, levies a fine, it barrs the

the estate Tail. 1. As the King is bound by the stat. W. 2. so shall he be benefited by stat 4. *H.* 7. 2. A generall stat. binds the King for Lands discended from his ancestor a subject, not in the discent royall, but in speciall cases. 3. The Kings issue at the time of the fine are subjects, so within the stat. *Quære*, whether the conusee after the render needs not *Letters Patents*, which by expresse words, may give him leave to enter.

Nevill: case. f. 33.

The dignity of an Earl intayled is forfeitable by Treason.

Resol. 1. It is within the stat. of W. 2. ordinarily intayled; it was anciently an office, and offices might be intayled.

2. It is forfeitable by a condicion in Law: The office of an Earl being to counsell the King, in time of peace, and defend him in time of war, he forfeits it, if he turns his counsells and armes against him. If not by Common Law it is forfeited by stat. 26 *Hen.* 8. within the word hereditament; the words use, and possession, are added to show, that every hereditament not forfeitable at the Common Law, as uses, &c. may be forfeited; at Common Law the donee had power of alineation after issue, that performed the condicion; yet had he retained the estate, he had no absolute fee, nor could any inherit, but as heir, according to the form of the gift. So in other Cases out of the statute, and here.

Penall Statutes f. 36.

The King cannot convey the benefit of a Penall stat. nor the power to dispence with it to

any subject. The King is trusted with a stat. for the publick good, this trust is inseparable; the King may dispense with a subject that he shall not incur the penalty. The forfeiture cannot be levied otherwise then the stat. appoints.

Lillingtons case. f. 38.

Tenant in fee grants a rent charge, Proviso, that the person of the grantor shall not be charged; the grantee acknowledges a reconusance, and releases to the grantor; the conusee sues an extent, and brings debt against the grantor Tenant of the Land.

Res. 1. The rent is extendable; for, notwithstanding the release, it is in being as to the conusee; no diversity whether the release were before, or after the extent; by the reconusance it was extendable, and it cannot be discharged by the act of the conusor. The Lords release to a Corporation is mortmain, yet it extinguishes the seignory.

2. Debt lies not for the time the extent indures, although by the release the frank Tenement is determined, as a Lord grants his seignory for years, the grantee shall not have an action of debt.

3. After the rent determined, &c. notwithstanding the Proviso, debt lies, the grantee has no other remedy. Grantor of rent charge enfeoffes A. he B. the Executors of the grantee, who dies, shall have debt against all of them, for the arrears incurred in their time.

Bedels case. f. 40.

B. Covenants in consideration of fatherly love, to stand seised to himselfe for life, the remainder

mainder to his wife for life, remainder to his second son, &c. use is raised to the wife.

Resol. 1. Though the consideration in the deed reaches not the wife, another may be averred consistent with the deed.

2. Limitation to the use of his wife imports a consideration in it selfe, so if it were to any of his blood. If the Covenant be upon consideration of an 100 l. to stand seised to the use of his son, nothing passes before inrollement, *Expressum*, &c.

Beresfords case. f. 41.

USe limited to A. B. and to the heirs males of the said A. B. lawfully begotten, is an estate Tail. *Object* The words *of the body* are wanting, and *lawfully begotten* is alwayes implyed. *Ans.* The words *heirs* must be used to make an inheritance, not those *of the body* for an estate Tail, but such as amount to as much; the senso is according to the intent of the donor, of, or by, &c.

Kenns case. f. 42.

K. has issue by E. M. they are divorced, and the marriage by sentence made voyd: K. marries F. has issue E. and dyes: E. is found heire by office, M. preferrs a Bill in the Court of Wards to traverse the office, the Committees of the Wardship answer, one dyes, M. sues a Bill of reviver, and having issue W. dyes, W. sues another Bill of reviver.

Res. 1. While the sentence is in force, the issue of the first wife is a bastard; of this the speciall judge has jurisdiction, and our Law gives credit to him; sentence of divorce may be repealed after the death of the parties, no divorce can be after

after death, that were to bastardise the issue. The tryall belongs to the Kings Court, if it be not restrained by any sentence.

2. The Plaintife cannot traverse, &c. without office found for her. The King being assured of his Wardship, or primer seisin, they cannot be wrested from him, but by him, that may make the benefit as great; stat. 2 *Edw.* 6. extends not to give traverse without office. If two are found heires by two offices, one of which within age, the right heire may traverse immediately.

2. A bill of reviver, not allowed upon a bill of reviver, because of the infiniteness.

Lib. VIII.

The Princes Case. f. 1.

Queen *Eliz.* 37. grants three mannors parcell of the Duchy of Cornwall, to H. L and G: M. the King brings a *Scire fac'* against the said H: L. sergeant H, and W. H, his son, to make livery to the Prince by force of the stat. 11 *Edw.* 3. H: L. pleads no such record, H. and W: H. plead the *Letters Patents*, with a *non-obstante* of the stat. that annexed them to the Duchy; and the 43 of *Eliz.* of confirmation; to the plea of H: L. the Atturney produces an *inspeximus*, and demurres upon the plea of the other two, who joyn, and as friends of the Court, repeat part of the stat. 1 *Hen.* 7. concerning the Duchy.

Vide r. 5. c. 14.

Resp.

Ref. 1. The Charter of Creation of the Prince, Duke of C. 11 *Ed.* 3. is an Act of *Parliament*, without a ſtat. ſuch limitation to the firſt begotten ſon were voyd. For if there be Grandfather King, Father Duke, and a ſon, the King dyes, the Father is King, the ſon Duke, againſt the rules of Law. 2. Lands cannot be thus inſeparably annexed to the Duchy, but by ſtat. 3. The eſtate is limited to ceaſe when the King has not a firſt begotten ſon, and to revive when he has, which cannot be without a ſtat. 4. It were abſurd that the creation of ſix Earles at the ſame time ſhould hold firme, and the creation of the Prince be invalid. 5. The words common councell of the Prelates, &c. in the Charter, and the concluſion by the King and his councell in *Parliament*; when *Letters Patents* paſſe by bill ſigned, the bill, &c. remaines with the Chancellor for his warrant, when by bill ſigned and Privy Seale, the Privy Seale with him; and the bill ſigned with the Clarks of the Signet; when by bill ſigned the ſubſcription is by the King himſelfe; when by Privy Seale, by Writ of Privy Seale; when the King himſelfe ſignes, it is ſubſcribed by the King with his own hand; when by ſtat. by the King and his whole councell in *Parliament*, in creation of honour *Hæ teſtib.*

2. The ſaid Charter having the force of an Act of *Parliament*, needs not the help of any ſtat. the *Scire fac'* reciting another Act, and having ſufficient matter ſhall not abate for ſurpluſage.

3. The Prince has an eſtate in fee in the Dukedome, 21 *Edw.* 3. the Princeſſe was indowed; the words are to the heirs of the Prince, without reſtraining to what body.

4. Againſt

4. Against a generall ſtat. no ſuch record ſhall not be pleaded; if loſt, or periſhed, the Judges ſhall inform themſelves, and give notice of it, and this ſtat. is generall which concernes the Prince; the ſtat. of confirmations extends not to it. 1. That has ſpeciall relation to certaine defects, as miſnaming. 2. Statutes are made good there againſt the King, ſaving the right of others, therefore the Princes right is ſaved; *In ſcire fac.* here though the King or Prince may, the more formall way, is that the Atturney Generall replie.

No ſon of the King, but the firſt begotten (though heire apparant) can bee Duke of *Cornwall.*

Calyes caſe. f. 32.

1. To maintaine an Action againſt an Inne-keeper for goods ſtole, it muſt be a common Inne.

2. It muſt be a Paſſenger, not a Neighbour, who is lodged upon his requeſt who ſhall have ſuch action. 3. The Inne-keeper ſhall anſwer only for goods within the Inne, not for horſes at graſſe; if he were requeſted, to turn them out. 4. There muſt be ſome fault in the Hoſt, or his ſervants, he is not chargeable, if his gueſt be robbed by one he brought with him; or if he required him to carry his goods into a Chamber, and he leaves them in the Court; otherwiſe if he lodges one with the gueſt, who robbes him: No excuſe that he delivered the key to him, or that no Goods were delivered to himſelfe. 5. Hee ſhall not anſwer for the battery of his Gueſt.

Paynes

Payne's case. f. 34.

Wife, Tenant in tail, has issue, which was heard to cry, and dyes; she dyes without issue, the Husband shall be tenant by Curtesie: The cry is but a proof of the life, the Child must have humane shape, though deformed; not be cut, or ripped from the Mothers belly; Lands discend after the death of the Issue; the Husband is tenant by Curtesie, so is the second Husband, &c. though the Wife was tenant in speciall tail with a former Husband, who had issue by her at the Common Law; the condition was performed, and any issue inheritable: Seisin in Law makes not tenant by Curtesie, the Issue must derive his title from the Wife, not from her Ancestor.

Barretry. f. 36.

A common Barretor is a common maintainer of suites and quarrels in Courts, or the Country: 1. In disturbance of the Peace. 2. In taking, or detaining possession with force, or deceit. 3. By false Calumniation, or sowing quarrels: To indite him one or two acts is not enough, he must be called a common Barretor.

Greislyes case. f. 38.

By custom A. is chosen Constable in the Leet, who refuses, and departs out of the Court; the steward Fines him 5l. the baylies of the Lord distrein, he brings in repleav.

Res. 1. Judges of Record onely may assesse reasonable Fines for contempts in disturbance of their Courts.

2. This Fine need not be affeered, because the stat' of *Mag. Char.* speaks of amercement, not of

of fines: Fines are imposed by the Court, Amercements by the Jury; therefore judgement of amercement is generall, that he be in *Misericordia*; and after, upon estreats directed to the Coroners, they are to affeer: the Statute that Nob'emen shall be amerced by their Peers, is out of use, their amercement is certain; a Duke to 10.l. &c. Amercement of the Officer of the Court, &c. shall be affeered by the Court; so of the Sutors who are Judges; but if the Jury be adjourned to a day, at which one makes a default, because he shall be assessed to the value of his Land by the year; his Companions shall inquire, &c. the Court cannot know it.

3. Distresse may be taken for Fines without Custom, or for Amercements, which is lesse.

Whittinghams case. f. 42.

The tenant of the King, or other Lord, enfeoffes within age, and dyes without Heir, no escheat of the Land, is, by attorny otherwise. There are three kindes of Privies: 1. In bloud inheritable, generall or speciall, which shall take advantage of the non-age of their ancestor; no Heir is capable but he to whom the right discends. 2. Privies in estate, which are not, but in speciall cases, benefited by the infancy of another: Infant joyntenant enfeoffes, and dyes, the survivor has no remedy; otherwise, both joyntenants, Infants enfeoffes, one dyes, the whole is avoidable, there was a joynt right still which survived: So the husband seised in right of his wife enfeofes within age, and dyes; no right discends to the Heir, he cannot enter, the wife may; had the husband made a gift in tail either might enter, the heir, because the reversion discends to him; at the entry of the heir, the:

the estate gained by discontinuance of the husband, vanishes, all revests again in the wife. 3. Privies in Law; and these are not preserved against the acts of infants, as the Lord by escheat.

Infants, by breach of condicions in Law, may forfeit their Lands; so by condicions in Law, at the Common Law founded upon skill, not, if without skill; so by condic' in Law by Stat', where action is given to recover Land, as in waste; otherwise, where no action is given, as in Mortmain: For recovery, by condicion in Law, is more strong than an entry; as Lessee for life leases for years, and discontinues; the Lessors entry cannot touch the lease for years, otherwise in recovery in waste.

Jehu Webb's case. f. 45.

The King grants the Office of the Kings Tennis Playes at *West.* the grantee is disseised, he brings an assise: the construction shall be reasonable, *viz.* the Tennis Playes for the Kings houshold, and not only for the King: as Commission to take up Singing boys out of any Cathedrall for the Kings Chappell, those that Sing there for their pleasure cannot be taken. There were but two formes of Assises at the Common Law; 1. Of novel disseisin, *viz.* of frank tenement. 2. Of common of pasture, for no other, as in the Register. *West. 2. cap.* 25. gives it of profits to be taken in a certain place, instead of a *Quod permittat*; though Offices come in, in the throng, yet an Assise lay of an office at the Common Law: and though no Tenant for life might have a *Quod permittat*, yet an assise he may, it lay at the Common Law: This must be understood of Offices of Profit, it lies not.

not of Offices of Charg: Originall Writs framed by Stat' cannot be altered but by Stat', in assise for a new office only, needs it be shown that there are profits belonging to it.

Sym's case. f. 51.

1 Tenant in tail levyes a Fine with warranty, and dyes; the warranty discends upon the issue of him in remainder, inheritable to the tail, and another: Issue in tail is barred in Formdon for the whole. The warranty is intire, and bars every man it descends upon, of his whole right; as A. seised of three acres, enfeoffes B. of one, and dyes, having issue two daughters, the wife of A. purchaces one acre of one of them, and brings dower against the Feoffee, who vouches the daughters to warranty; the wife recovers the other whole acre from the other daughter: Tenant by curtesie enfeoffes with warranty, and dyes, his son, heir to the wife, recovers, and assets discend, after the feoffee shall have *scire fac'* to have the Land recovered by the Stat'; but if assets discend to the heir in tail bound with a lineat warranty: after recovery in formdon, the feoffee shall have *scire fac'* for the assets, otherwise if the recoveror alien assets, his issue would recover the Land in tail again: But in these cases the discontinuee must confesse the demandants title, and pray, that if assets descend after, they may be saved unto him; the plea of warranty, and assets, is peremptory to him if none be discended: the Stat' wills, that the *scire fac'* shall issue out of the Rolles of the Justices, and there no ground could be for it in the Record; but if in the case the issue of the wife, or in tail, plead no assets, assets are found, but not to the value; the tenant shall have *scire fac'* to recover assets

(discended

discended after, because of the demandants false plea; warranty, and estoppel, discend upon the heir generall, the warranty binds, though he upon whom it discends, claimes not, by him that made it; estoppel, not so; as Husband and Wife joyntenants in Tail, the husband discontinues, and dyes; the wife recovers, *in Cui in vita*, enfeoffes A. and dyes, the issue may bring a formdon; in the same manner no man shall be benefited by advantages in grosse, unlesse he claime by him who made them such: The wife is bound to acquitall before marriage, the husband gaines a release to him, and his heires, they die, their issue shall not take advantage of the release; otherwise in advantages appendant, as if the Husband in the case get a grant of estovers to be burnt in the Wifes house to him and his heirs; or in rent seck procures a grant of a distresse to him and his heirs; but estoppels, with recompence, bind the right of him that claimes by him that made them; as the Abator marries the right Heir, and leases reserving rent; he and the wife die, the issue accepts the rent he is estopped.

Roger Count of *Rutlands case.* 55.

The King grants the Herbage, and Pannage of a Park to M. for life, and reciting to it, grants to the Earl of R. for life.

Resol. 1. The King has three manners of inheritances: 1. Some, which he cannot excercise himselfe, nor grant, in reversion, or remainder, as Corodies, Presentments; others which he cannot excercise, and may grant, in reversion, or remainder; others which he may excercise himself, and grant as Lands.

2. The King is not deceived, for reciting and

and granting as here, it enures as it may by law, to a grant of the reversion.

3. The grant here begins after the determination of the estate of M. what way soever: The King grants lands to A. and his heires, *Habend'* to him and his assignes, it passes by the premises.

Beecher's case. f. 58.

B. in debt makes a *Retraxit* by Atturney, is not amerced by the judgment, he brings Error.

Res. 1. The *Retraxit* must be in proper person: at the common law, every appearance upon the Kings writs, was in proper person, the party made his Atturney after by licence of the Court, not without the writ de *Attornato faciendo*, if the apparence was without writ. In cases where Atturney might be made, in contempt, the apparence must be in person; yet if by atturney, it is not erronious, the Court may dispence with the contempt: otherwise, where the apparence cannot be by atturney, as here, then appearing by atturney is error.

2. Amercement is to be in non-suit, more strongly upon *retraxit*, this may be assigned as Error, though to the advantage of B. because the judgment is not perfect, and for the Kings advantage; It shall not be amended, because the act of the Court.

3. He that disclaimes, shall not have a writ of Error, he has confessed he has no right; otherwise upon *retraxit*, that is onely a barr to the action, more forcibly here, where void by the atturney; *Retraxit* must be where the party is supposed present, therefore not when he imparles.

Swains

Swains case. f.63.

Ref. 1. The King grants a Mannor for life, except timber Trees, to one, who grants a Copyhold to A. he cuts estovers, good, he comes in by custome above the exception.

2. If the Copyholder prescribes to profits in any part of the Mannor, and the Lord aliens the place, the Copyholder admitted after shall have them, he is in paramount the severance, but he must prescribe specially.

Sir *Wil. Fosters case f.64.*

F. enfeoffs 4. E.6. reserving rent charge, which descends to T. who dyes intestate, his administrators avow for it, and alledge not seisin within 40 years, good, the stat' 32. H 8.c 3. that there shall be no avowry for rent, unlesse there were seisin within 40 years, is to be meant when seisin is necessary to be alledged; as in rent betwixt Lord and Tenant, which may be had by incroachment, the beginning of the seigniory may be time out of mind; where rent is by deed, or reservation, as here, or upon an estate tail, the seisin is not materiall, the deed or reservation is the title, incroachment hurts not, no *Injuste vexes* lyes in avowry, it is avoidable.

Loveday's case. f.65.

Jury appearing upon a judiciall writ, to try a certain issue, gives verdict, which is accepted, be it perfect or not, they are discharged, and shall not try the same issue upon a new *Nisi prius*; *Venire facias* shall issue anew; otherwise of recognitors of assise, they shall try the whole issue, as not being to try a certain issue, and coming in upon an Originall, the Court shall

shall not award a new Original, the pl' shall have a Certificate of assise to try the imperfections: The pl' sues a *Venire fac'* against many, the sheriff returns no writ, the pl' shall not have a severall *Venire fac'* after he cannot vary from the first.

Cregate's case. f. 66.

The def. pleads in barr to Trespasse, that the Bishop of N. lease by copy to M. to which Copyhold there is a Common in B. and justifies as servant to M. The pl' replyes, Of his own wrong &c. the replication is insufficient, Of his own wrong, has reference to the whole plea in barr, and not to the cõmand: therfore if the def. in false imprisonment, justifies because of a *Capias* awarded from the sheriff, who made him a warrant to take the pl', Of his wrong is no plea, the reference is to the whole; so the record should be tryed by the Jury, he must traverse the warrant: The plea is good, if the proceedings be in a Court not of record.

Ref. 2. This is pleadable, when the others plea is matter of excuse, without claim or interest in himself or his Master, else the commmand is to be traversed.

3. Where authority is derived from the plaintiffes self, or given by Law, as to see if wast be done, the pl' must answer to it, though no interest be claymed, and shall not plead of his own.

4. If this plea be admitted here, all parts of the plea in barr shall be tryed, and the issue would be nothing but multiplicity.

John

John Trollop's case. f. 68.

Def. in error pleads Excommunication, and produces a Certificate from the Vicar-generall of D. the words of which are, *Universis Clericis, &c.* To all Clerks through the Dioceſſe of D. The pl' pleads the generall pardon 3. *Jac.*

Reſ. 1. The Officiall cannot certifie Excommunication, but he only to whom the Court may write to aſſoile the party, as the Biſhop, or the Chancellor of the Univerſities: the Biſhops Certificate, if he dyes before the return of the writ, ſhall not be received, the ſucceſſor ſhall certifie: not one Biſhop the Excommunication of another: a Biſhop elect may certifie before conſecration, and the Vicar-generall, if the Biſhop be beyond ſea.

2. The Certificate is inſufficient, the direction is particular, the Kings Court and all men elſe are excluded: So protection in one Court ſerves not for another; The Kings Court has conuſance of Excommunication, therefore the ſuit and the cauſe muſt be expreſſed in the Certificate, that the Kings Court may judge of its ſufficiency, and if inſufficient, as where the Biſhop excommunicates in his own cauſe, the Court may write to him to abſolve.

Whitlock's caſe. f. 69.

The reverſion upon an eſtate for life, levies a fine to his own uſe, till the marriage of his ſon, and then to the uſe of himſelf for life, with power to make leaſes, ſo they exceed not 21. years, or three lives, reſerving the ancient rent; the remainder to his ſon in fee: The ſon marries, the father leaſes for 99. years, if two live ſo long, reſerving rent to him and his heires; good.

Reſ.

Ref. 1. He has pursued his authority; were his power particular to make leases for 21 years, or three lives, he could not make a lease determinable upon three lives, by this generall power to make leases, so that, &c. he might.

2. The rent goes to the son, though he that reserved holds but for life, the lease for years has its essence from the fee, and in judgement of Law precedes the estate for life, and all the remainders; the safer way were to reserve generally, and leave it to the Law to make distribution.

Grenelyes case.

Husband and Wife Tenants in speciall Tail, the Husband enfeoffes G. and dyes, the Wife dyes, the son enters and leases to the Pl.

Ref. 1. In this case at the Common Law, or had the Husband bin disseised, &c. as here, this had bin a discontinuance to the son, but the entry of the Wife had purged it.

2. The estate which the Wife has jointly with her Husband, is within the Purvier of the stat. 32 *Hen.* 8. c. 28. by which a fine by the Husband alone of the Wives Lands shall not further, and within the stat. *West.* 2. c. 3.

3. The sons entry is lawfull, though he claims not as heir to the Wife, as the stat. but as heir to both; he is within the words, or to such as have right by the death of the Wife. This stat. is to be intended of discontinuances by the Husband, not lawfull barres, these the issue cannot avoid; and the stat. sayes they may enter, which they cannot where they are barred. If the Wife enters within five years, as by stat. she may, this, notwithstanding the issue is barred, as is her selfe, if she slips the five years. Husband Tenant

nant in Tail remainder to the Wife in Tail enfeoffes, ſhe may enter by the ſtat. after his death, not if he ſuffers a common recovery. In the bare caſe the ſon might bring his formdon at the Common Law: where before this ſtat. *Cui in vita* or *ſur cui in vita* lay, entre is given by this ſtat. and not otherwiſe.

The Lord Staffords caſe. f. 73.

Reverſion in the Queen upon an eſtate Tail, ſhe grants it to T. in Tail, on condicion to have the ſaid reverſion in fee; the condic' is performed, the Lord *Staff.* Tenant in Tail levies a fine, his iſſue is barred.

Object. 1. Condic' of accruer, or which inureaſe an eſtate cannot be annexed to a thing in grant. 2. Nor to an eſtate Tail, but to ſuch eſtate as ſhall drown in the eſtate veſted by accruer. 3. When the Queen grants the reverſion in Tail, and then grants the foreſaid reverſion in fee, it ſhall be intended the ſame granted before in Tail. 4. The words *will and declare* ſound in Covenant.

Reſ. 1. Condicion of accruer may be annexed to a thing in grant: and to an eſtate Tail, as leſſee for life is, remainder for life, with a condic' to accrue to the firſt, good, yet no drowning the eſtate. To accruer foure things are requiſite. 1. A particular eſtate, as a foundation, a leaſe at will will not ſerve. 2. The eſtate muſt continue in the grantee till accruer, alienation, though a repurchaſe follow, the condic' is deſtroyed, as a coparcener aliens, and repurchaſes, ſhe cannot vouch to darrein the title paramount, ſo of homage anceſtrel, if the alienation be upon condic' which is broken. *Quære*, whether the fee ſhall accrue. The grantee may grant part

of his eſtate, as leſſee leaſes for years, and yet perform the condic' after. So of Tenant in Tail ſpeciall, after he is become Tenant in Tail after poſſibility. So of the ſurviving joynt-Tenant. The heir in the caſe might performe, &c. one inſtant is enough to ſupport the accruer; condicion, if leſſee be outed, he ſhall have fee, &c. the ſame inſtant he is outed the fee accrues; if the condic' be upon the regrant of a reverſion, which comes into poſſeſſion, the fee may veſt by accruer after. If leſſee for years accepts a confirmation for life, the condic' is gone. The eſtate of the leſſor, or grantor, need not continue; he cannot by his own act defeat his grant. 3. It muſt veſt at the time of performance, or never: and rather then it ſhal not veſt thus, by performance, the fee without office or other ceremony ſhal diveſt out of the King. 4. The particular eſtate and the condicion muſt both be contained in one deed, or in two at the ſame time; in Law they are but one grant, and by performance, the fee relates to the firſt delivery. To the 3 *Object.* foreſaid reverſion, ſignifies the Queens reverſion, *viz.* that which depends upon both eſtates Tails, the words too, go on, and grant all the premiſes: to the foure, the words *will and declare*, amount to a grant, thus are they uſed in Parents of Liberties, and things which are to be effectuall for the future. Tenant in Tail, remainder in Tail, remainder to the King, Tenant in Tail ſuffers a common recovery, becauſe the iſſue is not barred, the remainder is not barred; and where the recoveree is in of another eſtate, the remainder is not barred for this cauſe.

Wiet Wields caſe. f. 78.

W. ſeiſed of Land, to which he has common appur-

appurtenant, aliens five acres to A. who in replev. Counts, that he, and those whose estate he has in the five acres, &c. have had common there, &c. well.

Resol. 1. Though by purchase of part of the Land in which common appurtenant is destroyed in the whole, not so by alienation of part of the land to which the whole continues without any mischiefe.

2. The pleading is good without pleading specially.

Viniors case. f.79.

A. bound to stand to the award of R. revokes the submission, the obligee brings an action of debt.

Resol. 1. The Countermand is good, the authority is countermandable by the Law, nor can it by any means be made irrevocable.

2. Though the Plaintife show not, that the Defendant gave notice to the arbitrator, yet it is good, it is implyed, for without notice the revocation is void.

3. The countermand forfeits the obligation. 1. Because he stands not to, &c. when he countermands. 2. He has made the condicion impossible by his own act, he that is bound to give licence to another to carry wood, &c. for a time, gives him leave, and disturbs him, the bond is single.

Sir *Richard Pexals case. f.83.*

P. seised of Lands, part of which is held in *Capite*, devises 100 sheep, 10 bullocks, and 10 l. quarterly to A. with a clause of distresse, and that the grantee shall keep his courts for his life, for rent behind for two years, the grantee avowes.

Resp. 1. The deviſe of the rent out of the whole is good for the two parts, as to the third voyd.

2. The grantee has an eſtate for life in the rent, ſo had he, were the grant by deed; the intent of the grantor appears, that the grantee ſhall keep his Courts, and have 10 l. By the year for his wages; quarterly, has relation ſolely to the rent, becauſe the word, and, diſ-joines it from ſheep and bullocks.

Buckmeres case. f 86.

B. ſeiſed of Lands in Gavelkind, has iſſue three daughters M. I. and K he deviſes to M. in Tail, the remainder of one halfe to I. the remainder of the other halfe to K in Tail, with croſſe remainders, the remainder to the heirs of the body of T. B. and dyes, M. diſcontinues and dyes without iſſue, I. and K dye without iſſue, the Pl. as heir of the body of T.B brings a formdon in remainder.

In actions reall, in which the title is expreſſed, no man can have one Writ for Lands, to which he has ſeverall Titles; as in Eſcheat, Ceſſavit, Writ of Meſne, Writ of ward of body and land, yet allowed in the laſt though the tenures were ſeverall: not one Formedon, upon two diſtinct gifts, where the foundation is ſeverall; otherwiſe where one gift, though it takes effect ſeverally, becauſe the foundation is ſingle; as upon a gift in Tail to a brother and a ſiſter, which dye without iſſue, or the brother dyes without iſſue, the ſiſter having iſſue, but that dyes without iſſue; he in remainder ſhall have one Formdon though it veſts at ſeverall times. So in eſtate Tail to the father and ſon, and ſo here; in actions reall

founded

founded upon wrong, one Writ may demand severall Lands though the titles be severall; as in assise, or Writ of entre, not in entre sur disseisin done to my Mother and her Sister Coparceners, because the Writ comprehends the title, and by that it appears the causes of action are severall. So if one Coparcener in Tail enters in the intire, the other dyes having issue, he that entred dyes without issue, the issue of the other shall have two formdons, in personall actions one Writ may contain severall wrongs, and causes of actions, as tresp. ss, debt.

Note 1. If the remainder be executed, the issue shall have the generall formdon in discender, and shall count of the immediate gift, but if a lease of life be, remainder in Tail to A. remainder in Tail to B. A. dyes without issue, B. in formdon must mention the first remainder to A. 2. In formdon in remainder or reverter, the omission of the issue inheritable in the pedigree of the demandant, abates the Writ, not of the part of the donee, upon whom the remainder or reversion depends. 3. The demandant in formdon discender, must mention the son that survived the father, to whom the tail discended, though not seised, by force of the tail; he must name him son, not heir, of necessity. 4. In this formdon he must make himself heir, to him that was seised, and him to the Donee.

Frances case. f.89.

The Defendant in replev. avowes, &c. the Plaintif pleads in barr, that F. devised to I. his eldest son, who leased to him; the avowant replyes, that after the devise, F. made a feoffment to the use of the said I. on condicion, that he

suffer his Executors to carry away his goods. The estate of I. was for life, diverse remainders over, F. dyes, and I. hinders the Executors to carry away the goods, T. the next remainder enters.

Resolv. 1. Destroying condicions shall be taken strictly, only the uses to I. and his heirs, (for so far the will went) are avoyded.

2. Disturbance by paroll, is no breach of the condic'; because the avowant does not show speciall disturbance, his replication is void.

3. I. being a stranger, must have notice of the condicion, else he cannot break it; the copyholder by denyall forfeits not, without notice, that the use of the mannor is transferred. He that takes upon him by bond, to do such an act must take notice at his perill.

4. Though the title which the Plaintife made in barr to the avowry is destroyed, yet he shall have judgement, his count is good, and another title is given him in the replication.

Edward Foxes case. f. 93.

Reversion upon a lease for life remainder for life, in consideration of 50 l. demises grants and to ferm lets his reversion for 99 years rendring rent: This is a bargain, and sale, and no need of attornment. For the words bargain and sale need not, where there are words equivalent, as if land had bin sold at the Common Law, an use had bin raised, because it appeared there was such intent, but had their intent appeared to passe it at the Common Law, as by Letter of Attorney to make livery, no use had risen; here it is manifest their intention was to passe it as by bargain and sale, because rent was presently reserved, therefore reasonable it is, that he

he have the rents of the particular Tenants which cannot be but by bargain and sale.

Mathew Mannings case. f. 94.

ma. 806. 831. 847.

E. lessee for years bound in 200 m. to W. devises to M. after the death of his wife, and the occupation to be in the meane time to his wife, paying yearly, &c. to M. he makes his wife Executrix, she agrees, and dyes, intestate; administration of the goods of E. is committed to M. against whom W. brings an action of Debt.

Resolved. 1. M. takes by Executory devise, and not as a remainder; in judgement of Law the Executory devise precedes; as the devise had been: If the wife dyes within the term, then M. shall have the residue of the term, and over, to the wife for life.

2. This case is more strong, because it is a chattell, which may vest and revest at the pleasure of the devisor, without any mischief to the *Precipe.*

3. No diversity, had the devise been thus, of the term, or the occupation of the term, both ways it is as if he had said, the wife shall have so many years as she lives, and M. what is left.

4. After the agreement of the executor, the first devisee cannot barr the executors devise.

5. An estate may passe by will, so as it cannot by act be executed, as to his executory, till his debts are paid, the remainder over; the executors have a chattell determinable upon payment of debts, which cannot be at the common Law: If the sheriff sells a term upon *scire fac'*, and judgment be reversed, the sale shall stand.

Baspole's case. f. 72.

F. and B. submit themselves to arbitrement. For all demands, suits &c. so as the award be delivered in writing, &c. at the feast of I. &c. The Arbitrator awards, that B. shall pay 21 l. to F. and that B. shall be discharged of the debt he owes F. B. refuses to pay, F. sues the bond, which was to stand to award.

Object. 1. The arbitrement is but of one part. 2. It appears not the award is generall.

Resp. 1. It is of both parts; one was to pay money, the other to discharge the debt. 2. The pl' sayes, the award was of the premises, which shall be intended of all, till the contrary be shown: when the submission is generall, an award of part is good, otherwise one thing might be concealed, and the award made void: when it is speciall, the award must be of the whole, as where the award is to be of the premises, and yet there too it may be good, though but of part, where there is no such conclusion; as two of one part, one of the other, referr themselves &c. arbitrement may be betwixt one of the two, and the other.

Sir *Rich. Lechfords case. 99.*

Tenant by Copy in fee (where the custome is, that the heire within three Courts and proclamations made, shall be barred, if he claimes not) dyes, his heir beyond sea, till the three Courts, &c. be past, he returns and claims, he is not barred, more then by non-claim upon a fine: the custome must be construed, if he be within the realm, and of age, &c. otherwise, if he goes over after the death of his ancestor.

2. To no purpose, That he was not in the Kings

Kings ſervice, it is to be intended he could not have notice: *Mulier* over the ſeas ſhall be barred by the dying of the *Baſtard eigne* ſeiſed, though the diſcent of the diſſeiſor of a thing in grant barres not the diſſeiſee, diſcent in the caſe of the *Baſtard eign* barrs the *Mulier*: ſo two daughters, ſhe that is the *Baſtard eigne* enters, and dyes, &c. or they make partition; not where two make partition without colour. Baſtard dyes in the life of his father, his iſſue enters and dyes ſeiſed, having iſſue, *Quæſt.* whether the *mulier* be barred. The diſcent barrs the *Mulier* before entry of the iſſue, he may be in his mothers belly, or the wife of the baſtard may be endowed.

John Talbot's caſe, f. 104.

Lord and Tenant by Homage, Fealty and Heriot ſervice: Tenant enfeoffes the Lord of three acres, and after enfeoffes the father of the pl', who dyes, the Lord diſtreins for Heriot ſervice, the pl' brings repleav.

Reſol. 1. All ſervices to render an intire Chattell valuable, or thing of pleaſure, by alienation of part are multiplied, by the Lords purchaſe of part extinguiſhed; perſonall ſervices for the publick good ſhall be multiplyed, and not extinguiſhed as in the caſe: Contrary of private ſervices perſonall.

2. Whether the Chattel be annual, or not, as a horſe to be rendred every five years? the ſame, if the Lord purchaces.

3. Had the father of the pl' been firſt enfeoffed, then the Lord, Heriot had remained.

4. Heriot cuſtome, by purchaſe of part, is not extinguiſhed.

Doctor Bonhams case. f. 114.

The Preſident and Cenſours of the College of Phyſitians in L. by colour of Letters Patents H. 8. and of the Stat' 14 H. 8. and 1. Mar. fine and impriſon Doctor B. for practiſing Phyſick in L. (the Fine to be paid to them) and alſo for contempt to the College, he ſues falſe impriſonment: Controverted by two Judges, but not reſolved by the Court.

1. Whether a Doctor of the Univerſity, without any Grace, be within the Statute?

2. Whether he be excepted by the Exception?

Reſ. 1. The Cenſours power cannot impriſon the def. they cannot puniſh by fine and impriſonment thoſe who Practice without their Licence, but only ſuch as offend in not well adminiſtring: 1. Becauſe the clauſe that none ſhall practice without their Licence, and the clauſe which gives them this power are diſtinct clauſes. 2. The firſt clauſe impoſes another penalty, *viz.* 5.l. the month, but leaves the ill adminiſtring to be puniſhed by the Colledge, as incertain: 3. To bring within the danger of the firſt branch, there muſt be practice for a moneth, otherwiſe by the ſecond. 4. Thus they ſhall be judges and parties in one Cauſe. 5. If Doctor B. ſhall be puniſhed by 5.l. the month, and at their pleaſure, he ſhall be twice puniſhed for one offence.

2. Imagining theſe Cenſours armed with this power, they have not purſued it: 1. The Preſident, who is not joyned in the power, joynes with them. 2. The fine is impoſed for not appearing before the Preſident and Cenſours, and the Preſident has no power. 3. The Moity is the Kings, here all is to be paid to them. 4. The im-

imprisonment ought to be forthwith, 25 W. 2. 12. 5. Their Authority flowing from a Patent and an Act, their proceedings must be of Record, much more since they pretend a power to Fine and Imprison. 6. The act must be taken strictly, because against the liberty of the subject: till 1 Mar. no Goaler was compelled to receive their Prisoner; and that inlarges not their power, only it gives a penalty against the Goaler who refuses, &c.

Admitting the replication not materiall, though the Colledge have demurred upon it, the pl' shall have judgement; the def. show in their bar that they have imprisoned him without cause: it appears through all the pleading he has cause of action, not if the bar be insufficient; and by the replication it is clear that the pl' has no cause of action: Counts by the bar, the bar by the replication may be made good, in matters of circumstance only.

Case of the City of London f. 121.

Custome within a City, that a Forreiner shall not sell by retail, good; so upon penalty of 5. l. not by Charter: therefore Cities incorporate within time, &c. cannot have the priviledge, but by Parliament. So of Custom, that goods forrein bought, and forrein sold, shall be forfeit: Prescription, to have a Bake-house, and that none may have one there, good: The Stat' that provides that every man may sell by retail, or in grosse, extends only to Aliens.

The case of Thetford School. f. 130.

A mannor of 35. l. yearly, devised to diverse for maintenance of a School-master, Preacher, poor men; the divisor distributes the Revenues, the

the Mannor comes to be worth 100. l. yearly, the increase shall be to the increase of the stipends, and maintenance, &c. nothing to the devisees.

Turners case. f. 132.

Debt against an Executor, he pleads two recoveries against him in the Court of C. which rise to the whole in his hands: The pl' replyes one is by Covin, and that the other recoveror has accepted Composition, the def. delayes to accept a release to defraud the pl'.

Resol. 1. Were the two recoveries not Covinous, yet by operation of the Composition no more is administred then what is paid for the Composition; the deferring to accept the release, is against his duty, as Exceutor, and cannot help him.

2. The bar is insufficient: 1. He has not shown that the Court of C. has power to hold plea of debt.

2. Because he has not shown that the Testator was bound by obligation: For contract, action lies not.

3. Though the replication be naught, because the bar is insufficient, the pl. shall have judgement, he has not shown ought against himself, Vide *Doctor Bonh. case.*

Mary Shiplies case. f. 134.

Debt against Executors for 220 l. they plead nothing in their hands, &c. the Jury finds assets to 170. l. the pl. has judgement for debts and damages of the goods of the Testator, if, &c. and if not, damages and costs out of the goods of the def. Judgement affirmed in errour: In this case the Plaintiffe may have judgment, not execution, till the Executors have assets: So in debt against the heir.

Sir

Sir *John Needhams case. f.* 135.

Debt as Adminiſtrat', upon adminiſtration committed by the Biſhop of R. the def pleads adminiſtration committed to himſelfe by the Archbiſhop of C. becauſe the Inteſtate had *bona notabil'*, the Pl' replies, that adminiſtration was repealed.

Reſol. 1. Becauſe the def. ſhowed not that the inteſtate had *bona notabil'*, it ſhall be intended he had not, yet the Adminiſtration onely voydable.

2. Before the repeal of the Adminiſtration committed by the Metropolitan, the inferior ordinary may commit admiſtration, becauſe by the repeal it is d clared void from the beginning, and adminiſtrat' is but an authority which may begin hereafter.

Sir *Francis Barringtons caſe f.* 136.

R. grants his Wood within a Forreſt, in which the pl' has common; the grant is confirmed by ſtat', the grantee cuts down the wood and incloſes it, the Commoner loſes his common for ſeven years.

Reſol. 1. The grantee has an inheritance to be taken in the ſoile of another, the ſoile is to R.

2. Though he has not the ſoil, the ſtat' extends to him, and he may incloſe, it ſayes, or any other perſon to whom wood is ſold.

3. The Statute 22 *Edw.* 4. is for Woods in ſeveralty, it extends not where another has common there; at the Common Law he that had woods in a forreſt could not incloſe againſt the commoner, not his ſeverall, but for three years, with a ſmall ditch, &c.

4. That

4. That Stat' is as a conveyance betwixt the King and his subjects, and takes not away the right of a third man, such as the commoner is here.

5. The clause of incloſing, gives leave to doe it without ſuit to the King, or other owner; ſo power is given againſt them, not againſt the Commoner: Beaſt of the Forreſt are Hart, Hynd, Hare, Bore and Wolf; of Chaſe, Buck, Doe, Fox, Martin and Roe.

6. By Stat' 35 H. 8. c. 17. which forbids that any Beaſt come there for ſeven years, the pl. is barred of common.

7. Stat' which concern Forreſts concern the King, and are generall, &c.

Doctor Druries case. f. 141.

Doctor *Drury* recovers againſt B. who is outlawed, taken by *Capias Utlag'*, and eſcapes, the out-lawry is reverſed, D. ſues execution, and B. an *Audita Querela.*

Reſol. 1. The reverſall of the out-lawry defeats all acts executory betwixt the judgement and reverſall; therefore, if the recoveree, by erronious judgment eſcapes, after the reverſall of the judgment, the ſheriffe may plead, no ſuch Record, before he is without remedy, acts executed are not reverſed by the reverſall; as if the pl' in erroneous judgement recover againſt the ſheriffe in eſcape; or Conuſee of a ſtat', *in Detinue*, where the def. prayes garniſhment, recovers, and has execution upon the ſtat', it ſhall hold, though the garniſhee reverſes the judgement: If one Judgment depends upon another, the latter ſhall tumble with the firſt, which was its foundation.

2. Acts voluntary, betwixt judgement and reverſall,

reversall, are defeated by the reversall, as the sheriffe upon *Cap. utlag.* sels his term; compulsatory, not as he sels a term upon a *Fieri fac'*.

3. Diversity betwixt a recovery by former Title, and reversall of a recovery; as a woman recovers in dower by Judgement, which is reversed, and the tenant brings a *scire fac'* for the profits of the Land, the time of the Judgement, till reversall, no plea, that after this, she has recovered by former title.

4. This out-lawry is declared void from the beginning, though the things executed by the reversall, are not restored, remedy is by *Audita Querela*.

Davenports case. f. 144.

Lessee of years of an advowson, grants the next advowson, if it happen void within the term, and surrenders; after which the Lessor presents, the grantee in *Quare imped'*, recovers: 1. The words *happen void*, are implyed, and operate nothing: 2. The grantor, by his own act, shall not defeat his grant: 3. The term continues as to the grantee.

The 6. Carpenters case. f. 146.

Six Carpenters enter a Tavern, drink Wine, and refuse to pay for it, no trespasse lies.

Resol. 1. Where the Law gives an entre, and it is abused, the entrer is a trespassor from the beginning, the Law judges what his intention was when he entred; he that enters by licence of the party, cannot be punished after for wrong done.

2. He that enters by authority, in law cannot be a trespassor for not doing, as tender of amends makes the distresse injust: after, and before

before impounding, the detiner injuſt, not the diſtreſſe; but after impounding, neither one, nor the other; the party may ſue a detinue, & writ of redelivery, upon amends tendred in the Court.

A Taylor makes a Garment without agreeing the price, debt generall lies not, he muſt count the other promiſed ſo much as he ſhould deſerve, and he deſerves ſo much.

Althams caſe. f. 150.

N. ſeiſed in fee of lands in W. and G. deviſes thoſe in G. to his younger ſon for life; it was agreed betwixt the heir, and the wife of N. that ſhe ſhall releaſe her dower in W. ſhe releaſes to the heir all actions, demands, &c. both the ſons dye, the wife brings dower.

Reſol. 1. The releaſe of all actions to him in reverſion bars not dower, there is no cauſe of action againſt him, but againſt the Tenant of the Franktenement; otherwiſe of the releaſe of right that bars actions, releaſe of actions bars not right; if there be any other means to attain it, if none, it bars, as the diſſeiſee releaſes to the heir of the diſſeiſor, the writ is extinguiſhed; not if to the diſſeiſor, and the diſcent after; or if to the leſſee for life of the Heir: Releaſe of all actions reall, and perſonall, is no bar in a writ of right; releaſe of a writ of right is, releaſe of actions bars not execution: in a *ſcire fac'*, founded upon the judgment it bars, releaſe of a thing due, before the day of payment, good. *Querela* is more then action, it includes, and releaſes the cauſe of action; releaſe of ſuits bars execution, which cannot be without ſuit, ſo of duty; but a releaſe of ſuits and quarrels bars not dower; otherwiſe of titles or demands releaſed.

2. The

2. The collaterall agreement is not of any effect: Generall words must be qualified by apt words in the deed.

Arthur Blackamores case. f. 156.

The Def. is named Esquire in the Originall, and by mistake of the Cursitor is out-lawed by the name of Knight, it is amendable: writ originall not amendable at Common Law, but in the Kings case; default of the Court, was, as the continuance ill entred, Essoyn, &c. any part of the record the same Term, misprision of the Clark not another Term; diverse Stat' were made of amendments, the 8. of H. 6. most large, it extends to any Record, Plea, Word, warranty of Attorny, writ originall, and judiciall, pannell, and return, *viz.* where it is the Clarks fault, and only his fault of negligence, not of ignorance, as debt brought against executors in the *debet* and *detinet*; if a word be not Latin, and is written for Latin amendable, as *imaginavit* for *imaginatus est*, in trespasse one abates the Writ for want of form, it shall abate against all, if for matter in fact onely against him; omission, or addition, which alters not the form is amendable, as if *Dei gratia* be omitted; Records maimed, or imperfect, by the carelesnesse or wilfulnesse of the Clerks, may be supplyed by the other parts of those Records, or by exemplification. Count or plea in bar, which wants substance not amendable, in another Term, default in the Colour, which is the Clarks mistake, is; and a record by the Paper-book; any thing apparent to be the fault of the Clark shall be amended in another Term, as nothing he owes, *De hoc, &c. & prædict' defend'*, for *querens nisi pri.* shall be amended by this

this Stat' if it give power to the Justices to proceed, else not; if the issue joyned in the record be mistaken in the *nisi prius*, it shall not be amended; misprision of damages shall, it is the Clarks fault, and not materiall to the issue: If there be no warranty of attorny, nor return, not amendable by this Stat', many cases were without remedy by Stat'; therefore were the Stat' 32 H. 8. c. 30. 18 El. c. 14. made, yet are there these cases not provided for by any Stat': 1. When there is no Verdict. 2. Variance materiall betwixt the Writ and the Count. 3. Lack of substance in the Originall, or Count. 4. Insufficient Tryals. 5. Where the Coroner returnes, the Jury and the Sheriff should. 6. The Sheriff name not the return. 7. No return indorsed upon the *Venire fac'*. 8. When one not returned gives Virdict. 9. Pleas of the Crown. 10. If it appears to the Court that he that has Verdict has no cause of Action. 11. Error in Law.

Might's case. f. 163.

Resol. 1. M. purchases Lands to himself, and S. an infant in fee, it cannot be averred that this was to take away Wardship, because he was never alone the Kings Tenant.

2. No feoffment that M. can make of his part, can be averred to be by collusion, &c. because without feoffment no wardship shall be, and the Stat' speaks of sole seisin.

3. Feofment to the Wife, a younger issue cannot be averred to be by Covin, by construction of the Stat' 32 and 34 H. 8. where no collusion can be averred by Stat' of *Marlb.* to seise more then the third part which belongs to the King: if one part be left to the King, no averment of Covin can be for the other two parts.

Father

father enfeoffes to the said uses, the remainder to his eldest son, remainder to his second son & dyes, his eldest son dyes, the second shall not be in Ward by avetment of Covin.

Digbye's case, f. 165.

D. before his Treason, the Kings tenant conveys his Lands to the use of himself for life, the remainder to his son, and heir in tail: The King cannot have wardship of any part by the Stat' 32 and 34 H. 8. because there is no heir: The heir must be sued by the name of heir, before 26 H. 8. the issue in tail was a speciall heir within W. 2. and had been in Ward.

The Earl of Cumberland's case. 166.

E. 2. grants in tail to R. C. H. 6. grants the reversion to T. C. if the estate taile be good, if not, he grants in possession; this is good one way or other: So of many Patents from time to time.

Paris Stroughters case. f. 168.

By *Mandamus* it was found that S. dyed seised 40 of *Eliz.* and held of the Queen in common soccage, 7 of *&c. a Melius inquirend'* awarded, whether he held of the King by common soccage, or Knight-service; found of the King by Knight-service: This writ of *Melius, &c.* is repugnant, and gives no other authority to find this Office, because the tenure cannot be of the King in the time of Queen *Eliz.* A new writ shall be awarded; but by no means, had the first been good. 1. For avoiding infinitnesse: 2. *Diem clausit extremum* shall not issue upon *diem clausit extremum*; *Mandamus* upon *Mandamus*; nor shall

shall *Melius, &c.* upon *Melius.* 3. If office be found against the subject he may traverse, upon which, if found against him, no remedy. So shall the King have but his Office, and *Melius*, and no more; though a severall tenure be found of two subjects, and one has an *ouster le main*, the King shall not seise by a former title without *Scire fac.*

Tourſons case. f. 170.

A. by Office found *idiot*, this by relation avoids his mean acts to the time of his seisin, the relation as to the mean profits, is but from the time of the Office. The Kings Title appears by Office; So in case of attainder. 2. The King receives the profits to maintain the *idiot* with necessaries, therefore he shall not have them but from the time he is charged to maintaine him, which is from the Office, otherwise of custody by reason of a seignory, or former Title.

Sir *Gerard Fleetwoods case. f.* 170.

Lessee for years in debt to the King upon account, sells his term, good, not extendable after; but a Chattell; a Felon may sell his Chattells before conviction; voyd, if execution awarded.

Hale's case. f. 172.

The heir in ward at his full age tenders his livery, and bargains and sells, and dyes, the Kings interest is determined by the tender which was all he could do, the bargainee shall not answer for the mean profits.

Sir

Sir *Henry Constable case. f.* 173.

The son of the Kings Tenant is knighted in the fathers life time, the father dyes, the son within age tenders his livery, the mean profits and rates of his nonage are saved.

Virgill Parkes case f. 173.

The Kings Tenant conveyes half his Land for the jointure of his wife, the other half for the payment of his debts, the Kings third shall be taken equally out of the whole.

Lib. IX.

Dowmans Case. f. 1.

THe Defendant in assise makes title by recovery suffered by V. to certaine uses; the Plaintife confesses the recovery, but sayes the recovery was to the use of V. and his heirs in fee; and traverses that it was to the uses mentioned by the Defendant. The Jury find it was suffered as the Defendant alleged, and that by indenture subsequent, the intent of the partyes to the recovery was declared by them to be as the Def. has alledged.

Object. 1. By recovery without consideration, the use vested in the recoveree, which the declaration after shall not devest, therefore not conclude the heir, as the acknowledging of the Tenant

nant in ſoccage that he holds by knight ſervice does not, &c. 2. At the time of the recovery the perſons and eſtate were incertaine 3. The declaration of uſes ought to be compleat of it ſelf without relation to any indenture; here in the mean time, theſe various uſes muſt be truſted with the ſlipperineſs of the memory, and farther, ſome of them cannot be without deed, as the eſtate for life without impeachment of waſt. 4. The indenture deveſts not the firſt uſes, it only declares ſuch is their intent, and therefore is but an evidence; nor to purpoſe, were not their intent ſuch. 5. Thus leaſes, and other mean intereſts, ſhould be deveſted.

Reſol. 1. Anſwered the ſubſequent indenture, directs the uſes of the precedent recovery by eſtoppell of the recoveree and his heirs: and though it be granted, that to the priviledge of not impeachment for waſt, a deed is requiſite, yet the eſtate without it is good. No averment can be, that the recovery was to other uſes then thoſe mentioned in the Indenture precedent. Otherwiſe in an Indenture ſubſequent. For if uſes were declared by any Indenture precedent, no declaration after can deveſt them. So had V. charged the Land, and then made ſuch declaration, this ſhould not deveſt the eſtate of the grantees, &c. but there being neither declaration, nor charge, uſes may by declaration ſubſequent be deveſted.

2. In all actions amongſt all perſons, and in all iſſues, the Jury may give verdict at large, the ſtat. *W.* 2. c. 30. which allowes it in aſſiſe is but in affirmance of the Common Law; but the Jury cannot find any thing impertinent to the iſſue.

Anne

Anne Bedingfields case. f. 15.

1. Common essoyn is allowable in dower, the stat. 12 E. 2. must be intended of essoyn of the service of the King, the stat. speaks in prorogation of right, which is properly this essoyn, because it is for a year and a day.

2. The Kings Tenant dyes seised of diverse mannors, found by office, he dyed seised of one, in dower against the heir of full age, he sues *Circumspecte agatis*, that extends not to more then is in the office. This Writ is in nature of *Ayd prier*, and the King has no right to seise more then is in the office. *Object.* As to that mannor to be allowed; as well as the heir were within age: For in this case by stat. Prerogat. c. 4. the wife may be indowed in the Chancery. *Answ.* By stat. *de bigam.* c. 4. ayd of the King shall not be granted in this case; before the stat. Prerog. Neither the King, nor other Lord could indow the wife, if the heir were of age, because then not Guardian, stat. Prerog. gives the King power to indow the wife in that case, if he will, not otherwise.

Where the heir pleads to dower, detinue of Charters, 1. They must concern the same land, this plea is allowed for the privity betwixt them, and because the wife which detaines Charters deserves not dower. 2. The heir must show the certainty of the Charters, that they be in a chest. 3. None but the heir shall plead this plea, nor he neither, when he comes in as purchasor, not if the wife had them by his balement or delivery. Nor if he came in as vouchee, having no lands in the same County, or as Tenant by receit. In these cases he cannot plead he is ready to render dower. 4. The Guardian cannot plead

plead it, the Charters belong not to him; detinue of the Ward he may, and if he be not rendred un-married, the Wife shall lose her dower.

Case of Avowry. f. 20.

Lord and Tenant, Tenant leases for years and payes the services, the Lord distrains and avowes upon a stranger. *Object.* The lessee is without remedy, for being a stranger to the avowry, he shall not plead any plea, but out of his fee, or something amounting to as much. 2. In vaine it were to pray aid of the lessor, he is a stranger to the avowry, the lessee may plead as much as he, which is no otherwise.

Answ. 1. True, a stranger to the avowry shall plead nothing in barre but out of his fee, or to that purpose; but the very Tenant being made a party, shall plead in abatement of the avowry.

2. The lessee here shall not have aid upon generall allegation, that such an one was seised, and leased to him; but by disclosing the speciall matter, and showing the avowry to be by disceit, to charge him unjustly; then both of them shall plead in abatement, here the Tenant shall have ayd before issue joyned; he that distraines for services upon fresh pursuit, may avow upon the Land by equity of the stat 21. *Hen* 8. in Law this is a distresse upon the Land, distress by fresh pursuit cannot be for dammage feasant. If the Lord distrain the beasts of the Tenant where nothing is behind, the Tenant shall not have ayd of the mesne, because he has see; but the mesne must put his own beasts into the pound in their stead, and sue repleavin; If the Tenant sues repleavin, he may request the mesne

to

a joyn with him freely, and if he will not the Writ of mesne lies. The Tenant may make resons if nothing be arere.

Abbot of Strata Marcella case. f. 24.

In *Quo warranto*-For the claim of Wayfes, Strayes and Chattells of fellons, &c. the Defendant pleads, to the Chattells of felons, that the Abbot of S. lawfully had, and injoyed them till the Abby was granted to the King by stat. 27. *Hen.* 8. &c and pleads the stat. 32. *Hen.* 8. which revives the priviledges of Abbies, and that the King granted a mannor parcell of the Abby, and *tot' talia & tanta privilegia quot predictus nuper Abbas, &c.* by whom he claims by feoffment, and pleads not the feoffment by Deed.

For the Queen *Object.* It is not pleaded that the Abbot had the Chattels of felons by Charter, which he cannot have any other way. 2. The plea is incertain, *Quot prædictus nuper Abbas habuit*; it cannot be tryed by the Country, because it must passe by Charter, not by the record nor judges, because it is not pleaded in certainty. For the Defendant it was said, it rests upon the construction of the 32 of *Hen.* 8. the intent of which was to advance the value of Abbies by reviving the priviledges, which were drowned in the Crown. Those priviledges which the King has of common right were drowned; not those which in the beginning were created by the King, as a Fair or Market, &c. the stat. revives those that were drowned; and being revived, the Patentee shall have them, by the word the same as inheritances in being

in the Crown; and by the word ſuch, if the Abbot had them, the Patentee ſhall have ſuch; If the King grants a mannor with Chattells of felons, which comes to him again, and he re-grants it by the generall words ſo many and ſuch, the Patentee cannot plead generally, but muſt plead the firſt Charter ſpecially, and the regrant which refers to it; which was yeelded to: but in this caſe the generall allegation is ſufficient; becauſe it purſues the ſtat. which is generall, and it may well be tryed by the County whether the Abbot had ſuch franchiſe or no; ſo it ſhould be if in the Plea, lawfully had been omitted, the addition of which is not to purpoſe it is implyed; For the Queen it was argued, The Charter of the Defendant is void. 1. It appears not what Eſtate the Abbot had. 2. Becauſe he claymes Chattels of felons as append. to a mannor. 3. Becauſe he pleads a feoffment of a mannor and pleads it not by deed, without which the priviledges paſſe not; replyed. 1. To the firſt ſeiſin in fee ſhall be intended till the contrary be ſhown, he has purſued the ſtat. To the ſecond the Court gave no relation, reſolved if the King grant a mannor, with the Goods and Chattells of Felons to the ſaid mannor belonging, they paſſe, though they cannot be appendant. 3. For the third exception, judgement was given againſt the Defendant.

In this caſe foure things are to be conſidered. 1. Which ancient Charters muſt have allowance, which not, to this, ſome may be claymed by preſcription without record, ſome by record only, the Charters of which laſt ſhall not be allowed if before the time of memory; if there be no record within the time of

of memory which may confirm them, as allowances in Eyre, or royall confirmation, usage will not serve; no more shall be allowed in them then what is confirmed; Obscure words of such ancient Charters shall be construed according to the Law then. 2. There may be prescription in franchise lying in point of Charter, with ayd of the allowance in Eyre, without showing the originall Charter. 3. If the Patent of priviledges granted in fee, referrs to anothers former grant which is but for life, good, the relation is to the quality of the estate. 4. The manners of tryalls, see the book at large 30, 31. &c.

Bucknals case. f. 33.

Tenure by such services, the Lord avowes for others, the tenure is traversable, if for more services of the same nature the seisin; It may be incroched, and is not avoydable in avowry, if the distress be not outragious; *In injuste vexes assavit* Assise rescuous trespass seisin binds not, the tenure is traversable; Issue in Tail, the successor of a Bishop shall avoid seisin in avowry, any man who can produce a deed of the tenure, the feoffee or his heirs.

Incrochment hurts not where there is no tenure, nor incrochment at many dayes, where they agree in the sum: seisin in avowry is not generally traversable, as never seised of the services, because by this means no remedy is left to the Lord for avowry, customes, or services, in this case the Tenant may disclaim, or plead out of his fee; and so traverse the Tenure. He that traverses seisin after the time of memory, must first acknowledge a Tenure, that the Lord may have his Writ of Customs and Services.

as if tenure be alleged for by rent fealty & ſuit, he muſt acknowledge all but ſuit, where the avowry is for ſuit, if the Lord allege ſeiſin by the hands of a Tenant in ſpeciall, the Tenant may traverſe ſeiſin by his hands; avowry for one ſervice tenure alleged by many, that only is traverſable, if there be not a ſuperiour ſervice, the ſeiſin of which is the ſeiſin of the inferiour ſervices; the Lord avowes, becauſe the Tenant holds one acre by fealty and 10 s. rent, the Tenant cannot ſay he holds that acre and another by fealty, and 5 s *Abſq; hoc*, without that he holds in manner and forme; for that is double, in barr for 5 s. and in abatement of the avowry for the reſidue; if he conclude and demand judgment of the avowry it is ſingle enough; if he agree in the ſervices or quantity of the Land, *De modo & forma* is good; So if the avowry be ſeverall of two acres, and both are held by one Tenure. Lord alleges Tenure by rent fealty and ſuit, and avowes for rent, the Tenant to the rent pleads nothing arrere, and traverſes the Tenure in manner and forme; becauſe he holds not by ſuit, which is found according, judgment againſt the avowant. Though the ſtat. 21. *Hen.* 8. be generall that the Lord may avow upon the Land; yet muſt he allege ſeiſin by the hands of ſome one; and the Tenant ſhall have the advantage of pleading which he had before the ſtat. a ſtranger Plaintife in replevin, where avowry is upon the Land, ſhall have all pleas which he upon whom the avowry was made before the ſtat. might have had; no man is a ſtranger to this avowry

Henſloes caſe. f. 36.

A. makes his Executors and dyes, one refuſes

fuſes, the others prove the Will, debt brought againſt thoſe that proved, &c. omitting the other not good; the refuſor may adminiſter after; he may have the Executorſhip by ſurvivor; if they all refuſe, and before Probate, Adminiſtration be committed; they cannot Adminiſter after.

2. Debt againſt an Executor, he pleads there is another Executor alive not named, he needs not ſay the will is proved, for after Adminiſtration no refuſal can be; The King had anciently the goods of the Inteſtate to the uſe of the dead. The ordinary has the Probate by his grant: before 31. *E.* 3. c. 11. the ordinary had but a qualified property, he could neither ſue, releaſe, nor ſell, but an action lay againſt him, and againſt the Committees by the name of Executors; this ſtat. has made three alterations concerning the Ordinary. 1. Of neceſſity he muſt commit Adminiſtration. 2. To the next and moſt faithfull friend, by ſtat. 21. *Hen* 8. to his wife or next of kin, or both. 3. His property is not more then it was before, only his power is, in that he may conſtitute others which have, as to Adminiſtrators this act has made theſe alterations. 1. They have full property in the goods as Executors. 2. May recover debts, ſue actions of Covenant, and of the caſe by equity, and all others which Executors may 3. Anſwer all actions by the name of Adminiſtrators. Probates and Adminiſtration, if traverſed ſhall be tryed by the Country, only the Probate & Adminiſtration belong to the ordinary, not the tryall: by this ſtat. every ſubordinate, to the purpoſe of commiting Adminiſtration is an ordinary within the ſtat.

The Earle of Shrowsburies case. 46.

Objected against the Patent. 1. The Kings grant of the Office of steward of the mannors of M. and B. and no County named, as if to A. that he shall be Sheriffe is voyd; denyed, all the Lands of a Prior alien granted by the King without naming the County good; the Patentee in pleading must name the County where they are.

2. The King grants the Office from a day passed which cannot be; answered, the intent was the Earl should have the fees from the day past, which if it cannot be, the grant is good for the time to come.

3. The Earl cannot make a deputy, three Offices passe by these *Letters Patents*, severally, of which this has the middle place. To the first power is annexed to depute, not to the second, again it is to the third *Habend. prad. Offic.* (thus contracted) with power to substitute by deputation. *Answ.* The *Habend.* shall have relation to this Office. It is to be intended, an Earl shall exercise such a base Office by deputy, and if a Sheriffe may depute, much more an Earl. Secondly, admit he could not, not using is no cause of forfeit, as it is without request when the Office concernes the Administration of Justice; otherwise where he needs exercise but upon request, as here, for the Office is private, not using without dammage, or request forfeits not.

4. The Writ of the action of the case is *vi & armis*, answered, that cannot be so for not doing, but for misdoing, but it is not in point of the action, here are two causes, as action upon the case

case, *Vi & arm'*, for hindring people to come to his Faire, which is the cause causing by which he lost his Tolle, this is the cause caused, and the point of the action, and good.

The Office being Mannorable, action of the case, or assise lies, otherwise of Land: *Vide*, five exceptions to the Verdict book at large.

Hicmot's case. f. 25.

Debt upon bond, the def. pleads a release in these words, *The obligee does acknowledge himself discharged of all Bonds*, and that he is to deliver all but one Bond (which is sued) made by the def. And

1. The words *acknowledge himself discharged of all Bonds*, are a release, or discharge of bonds.

2. The exception extends to the whole premises, and not only to the clause of delivery.

3. The Writ abates, the pl' has confessed the Bond was made by the def. and another.

Baten's case.

Quod Permittat, to throw down a house raised to the nusans of the Frank-tenement of P. and now of the pl', and counts that the defendants house hangs over the plaintiffs.

Res. 1. No need to show how he has the estate of P.

2. The writ is to the Nusans of the Frank-tenement of P. and, &c. good; the erecting in the time of P. implyes Nusans to him; and the showing to the nusans of the pl', is necessary to maintain the action.

3. The Nusans, to the damage of the pl', appears to the Court, it needs not be shown: the hanging over makes it plain that the light is stopped, and the rain falls, the pl' may throw

down the Nusans: The stat' W. 2. c. 24. which gives a *Quod permittat* against the alienee of him that erects, extends not to the alienee of the alienee.

The Poulterers case. f. 55.

He that was apprehended for the death of a man, was not bailable at the Common Law, without the writ of *Odium* and *Atia*, which was not allowed after Appeal, or Indictment.

2. If he were found not guilty, upon this writ he was not bailable, without the writ *De ponendo in ballium.*

3. Conspiracy lyes not before acquittall, but the Conspirators may be indicted, or censured in the Star-chamber.

William Aldred's case. f. 57.

Action of the case maintainable for erection of a Hogsty, so near the mansion of the plaintiff that the ayre was corrupted, though Swine be things profitable, so of a Lime-kil: a Die-house, if the filth runs into his Fish-pond, so of stopping the light, but not of a prospect.

John Lamb's case f. 59.

No man can be Convict as Libeller, unless he be a procurer, contriver, or publisher; reading, hearing, or writing a Libell is not publication; repetition in the presence of others, knowing it to be a Libell, is.

Robert Bradshaw's case. f. 60.

Lessor for six years, during the life of R. Covenants that he has power to lease; lessee brings Covenant, and showes not that R. was alive, nor who

who has the right, good: If R. was dead at the time of the Lease, it is absolute; if he dyes after, the action lies, he need not show who has the right, for he has pursued the words of the Covenant.

Macallie's case. f. 65.

1. *Excep.* To the Indictment: The Arrest was in the night, betwixt five and six of the clock in *Nov.* at the suit of a subject; which being injust, killing the Sergeant is but man-slaughter, not allowed. 1 Arrest may be in the night at the suit of a subject: 2. Though betwixt five and six in *Nov.* be in the night, the Court needs not take notice of it, without showing by the party, as in Burglary.

2. Sunday is no day, therefore the Arrest on it injust. *Answ.* Judiciall acts are not to be done this day, Ministeriall may be done out of necessity.

3. The Indictment has: In the Counter, in the parish of S. M. in W. omitting the Ward, good; if a Town be named, no need to adde in what Hundred.

4. The precept was to Arrest him within the liberties of L. and the Arrest was in L. good: The liberties include the City it self.

1. Exception to the Verdict. The Indictment and Verdict vary; the Indictment makes the Arrest by Precept, the Verdict findes by Custome without Precept. *Ans.* 1. The precept is but circumstance, and the variance not materiall, the substance being found; as the Indictment were, he killed with a Dagger, it is found with a Sword: So if indicted of Murder, and found Man-slaughter, good. Of malice is but circumstance. 2. The Indictment might have

been generall, *Ex malitia, &c.* the Law implies malice, ſo the precept not materiall.

2. The Cuſtome is not good to Arreſt without Summons, not allowed: If the proceſſe be erroneous, yet it is murder to kill him that executes it, the Miniſter is not to diſpute its validity: ſo of killing any Officer doing his duty, he need not flie to the wall, as others muſt.

3. The Arreſt is not to be before the plaint entred of record before the ſheriffe. *Anſw.* By Cuſtome it may, after entrie in the Porters book.

4. The Sergeant ought to ſhow at whoſe ſuit the Arreſt is, out of what Court, and for what cauſe. True, where the party ſubmits himſelf, here he was killed before he could ſpeak; had they kill'd him before the arreſt, knowing the cauſe of his comming, it had been murder.

5. It is not found that the killing is felony: *Anſw.* It is enough that the Jurors find the killing, which is the ſubſtance, and leave the judgment of the Law to the Court.

6. The Sergeant ſhowed not his Mace, he need not: 1. He was commonly known: 2. The party arreſted is to obey at his perill: Were it requiſite to ſhow his Mace, it would be a warning to the party to avoid him.

7. The arreſt muſt be by requeſt, after the plaint entred; it may be before or after.

8. The Verdict is repugnant; they find the plaint was entred of record the 17. of *Nov.* and they find after, it was entred the 19. of *Nov.* more ſtrong againſt the priſoners, becauſe the entree was againſt the Arreſt.

9. The plaint is without form, nothing; it is but a brief to draw the Court.

Richard

Richard Peacock's case. f. 70.

Commissioners to examine witnesses upon interrogatories must not hold them strictly to the interrogatories, but must suffer them to speak the whole truth; nor ought they to discover what the witnesses speak till publication; nor confer with the parties, to take new instructions in the time of examination: It is no challenge that a Juror was Commissioner for the pl' to examine witnesses in the same cause, he shall be reputed indifferent, being authorised by the King, otherwise of an Arbitrator, whose power is by the act of the party.

Doctor Hussyes case. f. 71.

In ravishment of ward against a woman Covert, &c. the Jury finds the heir is ravished, and married.

Foster and *Warbert.* A woman covert is within the Stat', the action was at the Common Law, and the st it' but gives a greater punishment; she is within the stat' of *Mert. c. 6.* that of Malefactors in Parks, those of forcible entrie, and redisseisin.

Cook and *Wallinsley* to the contrary: The Statute of *West. 2. c. 39.* has made these alterations.

1. It extends to heirs females, the stat' of *Merton*, not: 2. To heirs ravished after years of consent, not the other: 3. To the Clergy, not so, that of *Merton*: 4. The Stat' of *Merton* is *Vi abductis & detentis*, this is, *raptis vel detentis.* 5. That of *Merton* gives right of gard, *W.* ravishment of gard: 6. This Stat' has a more speedy processe, so that death of the plaintiffe, or defendant, abates not the writ: 7. It increases the punishment.

2. A woman Covert is not within the Stat': The words are, *If he marry the Heir, and cannot make satisfaction, he shall abjure the realm, or suffer perpetuall imprisonment:* but the Law having disabled the woman Covert to satisfie, she shall not therefore be banished, or suffer perpetuall imprisonment; and the Husband not being innocent shall not be punished, the punishment is personall. No Judgment of damages shall be at the Common Law where the action is brought upon a Statute; nor judgment upon a Stat' where the action is brought at the Common Law.

3. The verdict is insufficient, no ravisher is within the Stat', but he that marries the Infant; if the Infant marry himself, or be married by another, it is not within the Statute, and the Verdict finds the Marriage, but not by whom.

4. Damages are recoverable by the Stat', banishment, or perpetuall imprisonment in it are at the election of the Court. Note, *women covert are within the Stat' by the Justices of Common Pleas, Chief Just.* Hubar *in this case of* Hussey, *reverst in the K. B. because not* Plegii de prosequendo *entred for the plaintiff.*

Combes case. f. 75.

Copyholder in a Mannor, where there is a Custome to surrender, by Letter of Atturny, makes 2. his Atturnies to surrender to the use of N. in fee; they show the Letter of Atturny in Court, and by that Authority surrender.

1. Surrender by Letter of Atturny is good; it may be by Common Law without Custome, and by Atturny as incident to it: He that has a bare Authority, coupled with confidence, cannot act according to that power by Atturny,

38.

as Executors cannot sell by atturn. otherwise of him that has authority to dispose as owner of the Land, as *Cestyque use* by stat. 1. *Ri.* 3. but he that has a particular disposing power as owner of the Land cannot dispose, &c. by atturny, as lessee for life has power to make leases for 21 years. Personall things there are which are not to be done by Atturny, as Homage fealty beating his villen; Admittance of him, to whose use the surrender is, may be by Atturny if the Lord pleases, yet may he be compelled upon admittance to do fealty; more forcibly then here, otherwise it were very mischievous, the owner may be beyond Sea, or languishing, so that he cannot surrender for payment of debts, if the custom be that an infant may enfeoffe at 15. he cannot do it by Atturny.

2. The atturnies have pursued their authority, though they named not him that authorized them, their showing the letter of Atturny, and surrender by authority of it is all one, were it to lease by Indenture, it must be in his name that made the Letter of Atturny, Executors of necessity must sell Land in their own Name.

Henry Peytoes case. f. 78.

Accord with satisfaction a good plea, *In Ejectione firmæ. Obj.* Not, because the realty is to be recovered, and therefore ancient demesne is a good plea; but it were good if the term incurr and determine, &c. it is no plea in wast in the tenet against lessee for years, in the tenuit it is. *Resol.* In all actions where *Capias* or exigent lies, it is a good plea, to save the body from imprisonment. *Eject. fir.* is *vi & armis*,

mis, mixt with treſpaſſe, Executors may ſue it, of ejectment in the life of the Teſtator; by the ſtat. being a treſpaſſe. This being therefore a plea in treſpaſſe is a plea in it, as it is in appeal of *Mayhē*, though the forme of it be felony, it is mixt with treſpaſſe: it is a plea in waſt in the tenet, nothing is recoverable but a chattell, mony to be payed, whether the ſūm be collaterall or not, any thing elſe may be given in ſatisfaction, otherwiſe where ſomething elſe to be payd. The Jury way to plead an accord is by way of ſatisfaction, it muſt be ſtrictly purſued. Therefore if ſubmiſſion be of many things, it cannot be of part, if to be performed at a day to come, tender and refuſall no plea, if not accepted: by acceptance of ſatisfaction it is not to be avoided. Accord, &c. a good plea in *Quare ejecit infra terminum.*

Agnes Gores caſe. f. 81.

The Wife of a ſick man mixes poyſon with his Phyſick, the Husband and others eate of it and grow very ill, it is carried to the Apothecary who ſold it, he ſtirres it with his knife, taſts it and dyes, The wife is a murderer, Though the ſtirring added to the ſtrength of it, it had not been mortall without the poyſon added, the Law joynes the ill intent, and the event together. If poyſon be laid for A. and B. ſuppoſing it ſomething elſe, drinks it, &c. this is murder.

Henry Connies caſe. f. 84.

Atturnement by an infant binds him, he may be compelled to atturn in *per quæ ſervit.* and ſhall not have his age, it can be no eſtoppell to

to prejudice him, if it should, he may avow it at his age. In a Writ of mesne the Plaintif an infant, the Parolle shall not demur; in *cessavit* the writ of customes and services, he shall have his age.

2. Attornment by him in a grant of the reversion though he cannot be forced is good. In a fine he might be forced, &c. the rather, it is but a naked assent to perfect a grant.

Pinchons case. f. 86.

Action upon the case lies against Executors for the contract of the Testator. Not debt, there the Testator might have waged his Law. The Executors cannot, here neither; so of *Quo minus*, though it be a trespasse, it dyes not with the person, the Executors of him to whom the assumpsit is made shall have it, more reasonable then that the Executors should convert the Testators goods, to their own use.

2. The Plaintife need not averr, there are assets for legacies, this is preferred, if not, the other part must plead in barr that there are not.

William Banes case. f. 93.

Executrix assumes to the Creditor, that if he would not sue, &c. she would pay him by such a day, or assure him a term of years; she marries, he sues upon the case, and counts not at the time of assumpsit, that shee had assets.

Good, yet if she had not, it was but a naked Contract, it shall be intended at the first sight she has; and the assumpsit is good, though by it she shall be charged in her own right, and the

the consideration be in another. So if I. in consideration you will forbear B. assume to pay you, good: for though J. cannot be benefited by it you may be dammaged, she may give in evidence, that she has not assets.

Sir *George Reynels case. f. 95.*

P. seised of the Office of the Marshalsie, the King grants it in reversion for 31 years to E. who grants to S. P. dyes, who deputed R. at will, S. assignes to R. R. forfets.

Res. 1. The King may seise this Office without *Scire fac.* 1. He shall be in possession by seisure of things apparant, as the temporalities of a Bishop. 2. Of Lands where the profits are continuall, after his title found. 3. By both, as by Office and Presentation, in case of an advowson: the Office need not, the Kings Title may be traversed in the *Quare Imped.* 4. Without either, when the frank-Tenement is cast upon him, because of the mischiefe of a *Præcipe.* 5. Where two distinct matters of record, amount to an Office *Scire fac'* must be first. Found that D. is held of the King and by fine that the mannor of D. is aliened in *Mortmain.* Not if the Identity appeare to the Court; where the King is put to a *Scire fac.* A common person is put to his action, and of the contrary, &c. when a common person may enter: no *Scire fac.* shall be.

2. This Office cannot be granted for years, it is of great trust, it concernes Administration of Justice; this trust is personall, and cannot extend to Executors, &c. 2. The attendance must be continuall: which cannot be if the Officer dye intestate, till Administration committed

mitted, which perhaps may be never. 3. Every such Officer must be admitted and sworn in Court: but if the Office be granted for years, the Executors, &c. should have it without such ceremony. 4. It is an ancient Office, never thus granted. 5. Many questions might arise upon it, as whether it may be forfeited by outlary. Though the King cannot grant an Office for years, he may have a Chattell in an Office, as the Officer in Tail: *in capite* dyes his heir within age; because the Office was returned into the Chancery, the award of seisure shall be there, by which without any other act the King is in possession: but a Writ of discharge shall be directed to R. and the Judges of the Kings Bench shall commit the custody of the prisoners to another. Another Writ shall issue to him, to deliver over the prisoners by Indenture, for though he has no rightfull custody of them, yet is he charged with them till delivery. If an *Amoveas manum* be awarded, the King is out of possession without any other act; If the Gaoler leases his Office at will, action upon his escape lyes against the lessor, if the lessee be not able. The King may free the Sergeant at Armes of his attendance by Parolle licence. It is a service to be performed to his selfe and his Chancelor, he parts with no interest.

Margaret Podgers case. f. 104.

P. Copyholder for life, remainder for life, remainder for life, the Lord bargans and sells, and levies a fine to P. with Proclamation, five years passe, without any claim by those in remainder, they are not barred.

Res. 1. Copyhold estates are within the stat.

4. *Hen.* 7. within the word intereſt there, but if the Copyholder levies a fine by Covin, this barrs not his iſſue: if leſſee for years or a copyholder be outed, the Lord ſhall not have five years for the diſſeiſors fine, &c. after their eſtate determined, he may preſently bring an Aſſiſe, otherwiſe where is a leſſee for life outed; A mere ſtranger not commanded cannot enter to avoid a fine, or without the aſſent of him that has right, gurdian in ſocage, leſſor for life, Lord of the Copyhold may, becauſe of the privity betwixt them, and the infant or leſſees.

2. A fine barrs no man becauſe of non-claim, whoſe eſtate is not turned to a right, therefore not theſe here, becauſe the bargain, &c. and fine to the Tenant in poſſeſſion puts them not to a right. 1. It is a lawfull act. 2. Tenant in poſſeſſion deveſts not the remainder by acceptance, as leſſee for life accepts a fine *come ceo*, &c. though it be a forfeiture. 3. Becauſe he is in by ſtat. 27. which cannot do wrong.

3. After the bargain and ſale, he in the next remainder cannot enter, by Cuſtom his eſtate was to begin after the death of the Tenant in poſſeſſion, who if he forfeits the Lord is to enter, but that ſhall not deſtroy the remainder without expreſſe Cuſtome. Copyholder in fee ſurrenders to the uſe of one for life, he ſurrenders no more of his eſtate then ſerves the uſe; he ſhall not pay a fine for his admittance after the death of Tenant for life: had the Lord charged the Land of P. P. ſhould not be charged by it, the mean eſtates in remainder preſerve him from the incumbrances of the Lord.

Meriel

Meriel Treſhams caſe. f. 108.

Adminiſtratrix Defendant in debt, ſhe pleads the inteſtate, and his ſon acknowledged a reconuſance of 100 l. to the Qu. another of 800 l. to B. another of 1000 l. to M. &c. and that further ſhe has not aſſets; and after that ſhe has not ſufficient aſſets; and that neither the inteſtate nor theſe have ſatisfyed any of thoſe debts. The Plaintife replies, the reconuſance to B. was for the payment of 400 l. which is paid, the other to M. to performe Covenants, none of which are broken, and the reconuſance remains in force by covin of the Def.

Obiect. Againſt the replication, the Plaintife ſayes the reconuſans was for payment of 400 l. and ſo he takes averment againſt a record. The pleading ſhould be that there was a defeaſans made, &c. 2. Notwithſtanding the acceptance of 400 l. the ſtat. in force, and execution may be ſued; had B. offered a releaſe, that had bin a good plea, then the default had bin in the Defendant, and the Plaintife avers the reconuſans was not cancelled, by covin of the Defendant, which cannot be by one.

Reſ. 1. The barr is inſufficient, firſt it confeſſes that ſhe has ſufficient aſſets, &c. and after denies it.

2. She ſayes ſhe has not aſſets but what are not ſufficient, this is too generall, ſhe muſt confeſſe how much ſhe has, becauſe ſhe has certain knowledge.

3. The pl' his plea, that the reconuſance was for performance of covenants, is good without more certainty, becauſe he is a ſtranger.

4. The generall allegation of covin is good, without ſhowing the refuſall of the releaſe; fraud

fraud may be in one alone: the barr is inſufficient, the inteſtate was bound in the reconuſantes with another, and the def. has not averred, that the other has not ſatisfied.

Robert Mary's caſe, f. 111.

A commoner being a Copyholder, brings an action of the caſe for putting beaſts into the Common, by which he has loſt his Common; the Jury find the def. put them not in, but that they fed there.

1. The Jury has found the iſſue for the pl', *viz.* the feeding there, the putting them in not materiall.

2. This action lyes for the Commoner, he may diſtrain *damage feaſant*; but it may happen that by ſtrong hand he may be hindered to diſtrain, ſo if he ſhall not be permitted this action he is without remedy. 2. The Commoner who hath franktenement in the Common, may have his Aſſiſe; therefore ſhall the Copyholder have this action: 3. The wrong muſt be ſo great, that the Commoner loſes his Common; as the Maſter ſhall not have an action for the battery of his ſervant without the loſſe of his ſervice. 4. To the fourth objection, that it will be very vexatious that every Commoner ſhould have an action for one wrong. *Anſw.* It appears not to the Court that there are more Commoners; and if there be the action lies, every one has his private damage; and it is not like to Nuſans, which is onely puniſhable in the Leet upon this reaſon.

Lord Sanchars caſe. f. 117.

Reſ. 1. A Baron of *Scotland* ſhall be tryed by Commons in *England*.

2. The

2. The indictment of an accessory in one County, to felony in another, by Stat' 2 E. 6. shall recite that the felony was committed in that County, not that the principall was indicted there, that is no direct affirmance of the fact.

3. The Justices of the Kings Bench are within those words of the Stat', the Justices of Gaol delivery, or Oyer and Terminer: They are the supream Judges of Gaol delivery, &c.

4. The Lord *Sanchar* cannot in the terme time be arrained in *Middlesex* before the Justices of Oyer and Terminer: those cannot sit in the same County where the Kings Bench is.

The principalls were arraigned in L. in the terme time, that is another County.

5. There need not be 15. days for the return of the *Ven' fac'* upon indictment, in the same County where the Kings Bench is, otherwise in another County.

6. Because there is no direct proof that the L. S. commanded one of the principals, but that associated himself to the other that was commanded: the best way is to arraign him as accessory to him whom he commanded; but if he be indicted as accessory to two, and found accessory to one, it is good.

The word *appeal* in the Stat' *W.* 2. *c.* 14. is to be meant genetally of any accusation, inquisition, indictment, or appeal properly, and attainder to be intended upon any such accusation: Therefore if upon any such accusation the principall be erroniously attainted, the accessory may be arraigned, the attainder is good, till reversall: If the accessory be hanged, and the attainder of the principall be reversed, the heir of the accessory shall be restored to what his Father lost.

Anthony

Anthony Lowes case, f. 122.

A. Tenant of 59 Acres, parcell of the Mannor of B. by Knight-service; the Mannor of B. is held of the Mannor of C. parcell of the Dutchy of L. without the County Palatine, held of the King by Knight-service; and of another house there by fealty and rent, H. 8. grants the rent by release generally, and confirms his estate in the said Lands by fealty onely, and grants to him the Mannor of A. to be held by Fealty and Rent.

Object. When the King grants his Seigniory to his Tenant, the ancient seignory is extinguished, and a new one the best for the King, *viz. in Capite* created. 2. When he extinguishes services, parcell of the Mannor of B. the tenancy shall be held as the Mannor of B *viz. in Capite.* *Resol.* The 59 acres, and the house, shall be held by Fealty onely: And to the objection, the Kings release extinguishes not the services inseparable to a tenure, such fealty is, but all others; when the Kings grant expresses no tenure, it shall be *in Capite*; when Land moves from a subject, and the Tenure changed, the new shall approach as near to the old as may be. The feoffee of Frankalmoign shall hold by Fealty onely; the King grants here, granting the services, limits the tenure to be by Fealty.

A Knights fee is estimated by the value of the Land, *viz.* 20. l. annual; an Hyde of Land is as much as one plough can break up in a year: Relief the fourth part of the annuall value of the Land, *viz.* of a Knight 5. l. of a Baron 100. m. an Earl 100. l. a Marquesse 200. m. a Duke 200. l.

Hoyers

Hoyers case. f. 125.

Husband and Wife seised of Land held by Knight-service, in the right of the Wife in fee, levy a fine to one who grants, and renders to themselves, and the Heirs of the husband; they leavy anothers fine to the use of themselves for life, the remainder to their three sons, one after another Tail; the remainder in fee to the heirs of the Husband, neither body nor Land shall be in ward to the King.

Object. By stat' 32 H. 8. if the joyntenant, who has the fee, dyes; living, the other, his heir shall be in ward, so the first fine; and the second fine takes not away the Kings Title, being but to their own use, and for the setling of the Land upon their issue.

Resol. 1. It is out of the Stat' the estate by the first fine does not continue, both the conveyances are voluntary alike.

2. No wardship of the Land; this is no advancement of the wife, in the first fine the Land moved from the wife; nor does she take more by the second fine, than by the first.

3. The particular estate being out of the stat', no wardship accrues to the King, by reason of the advancement of him in remainder; if the reversion upon an estate for life convey to the use of the wife, this gives cause of wardship of the body of the heir. 2. Joyntenants for life of a remainder, to the heirs of one; within the letter of the stat' *the heir of the jointenant in fee dies of full age, his heir shall not be in ward.

* *Book at large, no wardship during the life of the Ten. for life.*

Sondayes

Sondayes case. f. 127.

S. devises to his wife for life, remainder to W. and if he shall have issue, that then his issue shall have it: remainders to others in the same words, &c. on condic' that if any of them goe about to alien, he in the next remainder, &c. after the death of W. &c. T. suffers a common recovery, the next rem' enters. As in *Corbets* case.

Resol. 1. Every son has an estate tail, the words, *If he have no issue male, &c.* are enough to create an estate tail: 2. Then the generall clause, *If any of their Sonnes or Heires of their body, &c.* make it plain: 3. The condicion proves it, alienacion more then for life is to be a forfeiture.

2. Restraint of tenant in tail to suffer a common recovery, void.

Quick's case.

The King, Lord, N. and Q. mesnes of a manor, which they held in common by Knight-service *in Cap.* and tenant of three acres, Q. makes a feofment to the use of himself for life, the rem. to I. his son; the tenant infeoffs I. who infeoffs Q. to defraud N. of the wardship of his son within age, and dyes, N. seises the Son, Q. dyes, the King shall not have the wardship of the body, and the moity of the three acres.

Res. 1. By the death of I. it was a chattell vested in N. the King had but a possibility, if Q. had dyed the son within age, which shall not devest the wardship out of N.

Object. 2. When the tenant enfeoffs a stranger to defraud the Lord of wardship, the Lord shall not have ravishment of ward, before that he has recovered

covered the land in a writ of right of ward.

Res. Notwithstanding the title of N. were but in action, it shall not be devested by discent after.

Bewly's case. f. 130.

The King Lord, mesne by soccage, and tenant who is attainted, the King grants to one to be held by Knight-service, and rent, and to do his services to the other Lords; the tenant shall hold by soccage of the mesne, he by soccage of the King: it was the Kings intent to revive the mesnalty, which could be no other way; the reviving an old tenure shall be preferred before the reservation of a new.

Thomas Holt's case. f. 132.

Grandfather (father, and son) holds *in capite*, he conveys part of his lands to the use of the father and his wife, rem' to the son in tail, the rem' to the right heirs of the grandfather; he conveys other lands to his younger issues, with divers remainders over, and dyes, the father tenders livery before it be sued, dyes.

Resol. 1. By the death of the father before livery sued, and after tender, the King loses *primer seisin*, not the mean rates, if any be due. 2. The son shall not pay *primer seisin*, nor sue livery, the father, not he, was within the stat' 32. H. 8.

3. If the King has once *primer seisin*, which is effectual, he shall not have it again of other lands conveyed to younger issues: he shall, if he had not the effect of the *primer seisin* of the father, as he shall present again, if his Clerk dye before Induction: before *W.* 2. if the donee after issue had aliened with warranty which had

discended upon the King, it had not barred him without assets.

4. In regard of the dry reversion which discends to the son, the King shall not have primer *seisin*; otherwise, if rent be reserved.

Matthew Mene's case. f. 133.

M. tenant *in capite* and of other Gavelkind lands, devises all to his four sons severally; had there bin no will, the King should have had but the third part of the land held and descended to the eldest, here he shall have the third part of the whole: so lands *in cap.* devisable by custome, are devised by the tenant to his wife, the King shall have the third part.

The King shall have this third out of all their estates equally.

Ascough's case. f. 134.

The King Lord, mesne *in cap.* and tenant, the mesne grants to the use of himself for life, the rem' to the tenant in tail, the tenant dyes, his issue within age, shall not be in ward during the life of the mesne; for living the mesne, the mesnalty is not suspended by the rem' in taile: not in respect of the mesne himself, he is tenant to the Lord, not because of the rem' to avoid fractions; otherwise were the rem' limited in fee, now had the tenant as high an estate in the mesnalty as in the tenancy, never to be revived, else the seigniory in fee should issue out of the mesnalty for life; there should be mesne for life and Lord, and tenant in fee: If the Lord grant his seigniory for years, the rem' to the tenant for life, the seigniory is suspended. It is true, a mesnalty or seigniory cannot be suspended in part, and in being in part, by act of the party; by

by act of the Law it may: The Lord accepts a rase of part of the tenancy, the seigniory is suspended; if the guardian indow the wife, the seigniory is in being for that, suspended for the residue. Two parceners are of the seigniory, one comes to the tenancy by title defensible, the other shall distrein her for the services.

There are four kinds of avowries: 1. Upon the very tenant: 2. Upon one as his very tenant, by the manner, where the tenant has a particular estate. 3. Upon one as his tenant without the word *Very*, where the Lord has but a particular estate. 4. Upon the land within his fee.

Thoroughgood's case. f. 136.

Tenant in fee enfeofs A. by deed indented, delivers it upon the land in name of seisin, good.

Res. 1. This is his deed, though he sayes not so, but delivers it in name of seisin; the delivery is of force without words: delivery to the party, to be his deed upon performance of condicions, it is his deed presently; otherwise of such delivery to a stranger. So are words good without actuall delivery, as if he sayes, *Take this*, it is like a livery within view: If the obligee bail or deliver the obligacion to the obligor to be rebailled, he may keep it: To be rebayled is voyd.

2. Delivery of a deed upon the land amounts to livery and seisin, if in name of seisin, else not: so of any thing else. Or if A. shall say he delivers you seisin, and delivers nothing, if the words be fit.

3. The delivery of the writing here, enures, first, as the delivery of a deed, then of livery and seisin.

Beaumont's case. f. 138.

B. and E. his wife tenants in speciall tayl, the rem' to the heires of the husband, B. levies a fine to E 6. who grants to the Earl of H. in fee, B. dyes, E. enters, the Earl of H. confirmes her estate, *Habend* to her and the heires of the body of B. B. dyes seised, having issue F. who accepts a fine upon *conusance de droit* onely, with proclamations, and dyes, having issue H. and I. H. in the Kings custody, after full age, and before livery, covenants to stand seised to the use of himself and the heires males of his body &c. has issue a daughter, &c. whether shall have the land, the daughter or I?

Object. 1. After entry of the wife, she has but an estate for life dispunishable of waste, because the tayl is barred, and because else by recovery or fine she might barr the conusee of B. 2. Admitting she has an estate tayl, the confirmacion is good; many estates may be derived out of a reversion in fee, and it is unreasonable that he in reversion should take against his own confirmation.

As husband and wife are lessees for life in right of the wife, the lessor confirms for their two lives, it is good: the confirmation here alters not the estate, only it addes a descendible quality to it.

Resol. 1. The wifes is an estate tayl, the stat' which inables the husband to barr the issue, saves the right of the wife, and there may be an estate tayl which cannot discend; as the son in the life of the Father levies a fine.

2. The confirmacion is void, he that confirms has but a possibility, which passes not by confirmacion: 1. The estate tayl of the wife, which

which cannot discend is confirmed. 2. Confirmacion addes no descendible quality, where he that is to be confirmed is disabled to take by discent. 3. It is against the statutes 4. H. 7. 32. H. 8. 4. If tenant in dower grant her estate, there is a descendible quality in the heire, to bring waste against tenant in dower, which by confirmacion of the heir to the grantee for life does not perish: by the same reason shall not it adde any thing here. 5. Confirmation is of three kinds, 1. The crescent or inlarging, 2. The perfecting, 3. The diminishing: Whether the wife in the case may suffer a common recovery, *Quære.*

Lib. X.

Suttons Hospitals case. f. 23.

Object. 1. By Parliament 7 *Jac.* an Hospitall was founded at H. in *Ess.* &c. therefore the incorporation after by letters Patents of the King void, and the Charter-house is not given by the said stat', S. purchased it after.

2. S. licensed to found the Hospitall dyes before foundacion.

3. The King cannot name the house and lands of S. an Hospitall, because the soyle of another.

4. Every Corporacion must have a place certain, the licence of foundacion is here at or in the Charter-house, therefore before S. has made it certain, no Corporacion: also the place of a

Corporation must be certain, by metes and bounds, a place known will not serve.

5. The King intends a present Corporation, which cannot be before S. name a Master.

6. Governours cannot be, till there be poor men in the Hospitall, therefore S. calls it in his Will, his *intended Hospitall.*

7. The foundacion cannot be without the words, *found, erect*; nor before such foundacion can a stranger give lands to it.

8. The Master is named at will, not for life, as he should be, that the franktenement of the Hospitall lands may be in him; the foundacion ought to be before the Master named.

9. The bargain and sale by S. is void: 1. The money paid by the Governours in their private capacity, cannot enure to them in their politick. 2. The *Habend.* is to them upon trust, which cannot be of a Corporacion. 3. As before no Hospitall founded.

The King cannot make Governours &c. of an Hospitall &c. not in being.

To the 1. *Answ.* The Letters Pattents recite the preamble of the act; by which, and by many parts of the Act, it is clear, that the Corporation was to be in future when it should be erected; the stat' only gives power to give Lands, without licence of alienation and mortmain; it appears by the Letters Patents the erection preceded the licence.

2. The licence is to him, his executors &c. and assignes, at any time hereafter, and the words of the Corporation are in the present tense; so the incorporation goes before the execution of the licence.

3. Though the K. gave the name, S. was the author of it, the King did it at his suit.

4. The

4. The King creates an Hospitall *out of these premises* so it is certaine, a place known may be an Hospitall, a manner may, which is more incertaine then the Charter house.

Five things are essentiall to an Hospitall. 1. Lawfull authority to incorporate, which may be by Common Law, as the King. 2. By stat. 3. Charter royall. 4. Prescription. 2. Persons naturall and incorporate. 3. The name. 4. The place. 5. Words effectuall, not restrained to a right form.

5. A Corporation may be without a head as the King incorporates a Town, with power to choose a Major, they are a Corporation before election.

6. It is enough that the incorporation be an Hospitall *potestate*, and by name, the Temple was incorporate in the time of *Henry* the 1. not built till *Hen.* the 2. here the house was built before.

7. The first donor, in Law is the founder; when the King gives the name, and designes the place and persons; the parts of the founder are only to indow: where the nomination, &c. is left to the founder, there though it be not necessary, oftentimes the words *fundo, erigo*, are used by him, in truth the incorporation is the effect of the Kings Charter, the founder is but an instrument.

8. The Master may be at will, by the *Letters Patents*, S. may name one at his will and pleasure.

9. The payment of the governors in their private capacity, &c. By them good, but the payment was as governors, and so they are acquitted. 2. Rent was reserved, which is a good consideration. 3. A bargain and sale may be upon trust, &c.

10. They may plead, &c. seised in the right of the house, though not then in being.

Mary Portingtons case. f.35.

Res. Recovery in value, barrs the estate Tail though not had, because by judgement, as warranty and assets barrs the formdon, or Tenant in Taile after judgement, and before Execution dyes: It were absurd that *Going about*, &c. may be barred, when the recovery it selfe cannot: were this condicion strong, the wife could not forfeit her Land by it; examination in Court only is an estoppell to her, she cannot lose her Land by any other; her acknowledging a reconusans with her Husband is voyd, there is no Writ to examine her; infant levies a fine, it is voydable, the tryall shall be by inspection; if the Wife alone levies, it binds her, if the Husband enters not. *V.* r. 9. 127.

Fennings case. f.43.

Tenant for life suffers a Common recovery, in which he vouches the remainder in Tail, who dyes, the reversion in fee enters, is barred.

Res. 1. At the Common Law recovery in value upon a true warranty against Tenant for life, bound the remainder or reversion.

2. No stat. provides for him that has a reversion or remainder upon an estate Tail. *W.* 2. c. 3. which gives resceit to the reversion, upon default of him that holds *per donum*, must be meant of the donee after possibility of issue extinct. The stat. 32 *Hen.* 8. c. 31. provides only for the remainder, &c. upon estate for life not in Tail.

3. Divers

3. Divers evasions were found out of that stat. as lessee for life leases for years to one, who enfeoffes another, and he in recovery vouches the lessee for life; this was out of the stat. the lessor and lessee had but a right, for which the stat. 14 *El.* was made.

4. The stat. 14 *El.* extends not where lessee for life vouches the remainder that is of right, and in the power of the remainder to cut off the reversion. The course is, Tenant in Tail bargains and sells to one, who suffers a recovery, in which Tenant in Tail is vouched, yet the bargainers estate is but for life, &c.

Lampets case f. 46.

Lessee for 400 years devises for life to his Executor, the remainder to his sister M. and dyes, M. marries, her husband and she release to the Executor, who demises and dyes; the husband dyes, the second husband of M. leases to the Pl.

Res 1. The Devise of the use of a term to A. for life, the remainder to B. for life, good, as an Executory devise.

2. So of the term it selfe in the same manner.

3. The first devisee cannot barr the Executory devisee.

4. The Executors assent to the first devisee, enures to the second.

5. The devise as here, by generall entry, the Executor takes as Executor.

6. Such Executory devise cannot be granted over.

7. It may be extinguished by release to the first devisee.

Object. The whole interest is in the first devisee; only a possibility in the other, which cannot be released; conusee of a stat. releases his right in the Land, yet he may sue execution after, like the sons release in his fathers life time.

Answ. A thing in action cannot be granted to a stranger, neither by act of the party or in Law; yet it may be released to the Tenant of the Land. 1. As it may easily be created being a chattell, so it may easily be determined. 2. Every right, as well present, as to come, by uniting of al that have interest may be extinguished one way or other; had the Executor and the sister joyned in assignment it had been good. 3. When many things are requisite to the perfection of any thing, the Law respects the originall Act; here the fundamentall acts are the devise, death of the devisor, and assent of the Executor; the death of the Executor, but a meanes to produce it into possession, as the wife loses her dower by joyning in her husbands fine: Tenant in ancient demesne levies a fine, there is a possibility the Land may be his again, if the Lord bring a writ of disceit, but he may release it: such possibility as may be released must be near not remote, and more then common possibility it is that the Executor may dye within 400 years. There must not be incertainty in the thing or person, as remainder to the right heirs of I. his eldest son cannot release, incertaine whether he shall be heire at his fathers death. So lease to Husband, and Wife, remainder to the survivor of them for 21. years, the Husband cannot grant the term. 4. By the death of M. it should go to her Executors, &c. therefore she may extinguish it; disseisee releases

releases all actions to the disseisor, he may have a Writ of entre against the heir; and the bailor who has released all actions, detinue against the Executors of the bailee, these are new actions of a later time. 5. The legacy is present though the interest be future, therefore by release of the legacy, the dependants of it are destroyed, and before the Executors assent. 6. Else there would be a perpetuity of Chattels.

By the release the Executor has a perfect estate for 400 years without limitation.

The request and acceptance of the release, by the Executor, amounts to an agreement.

Case of the Chancellor, Masters and Scholars, &c. of Oxford.

The stat. 3. *Jac.* gives presentations of Churches, belonging to recusants convicted, to the Chancellor, and Schol: &c. of *Oxford*, and makes the grants of such Recusants voyd; B. indicted of recusancy, grants the next avoydance is convicted, the Church becomes void, the Chanc. &c. bring *Quare Imped.* and say not that he remains a Recusant.

Res. 1. The grant of the next avoidance as here, good, the stat. disables the Recusant convict from the session of the *Parliament*. An Abbot grants the next avoydance before surrender, and after the stat. of Monastries void: The Kings Officer purchases Land, aliens it, and becomes indebted to the King, it is liable.

2. Covin shall not be presumed if not averred, if the Jury find covin to one intent, it shall not be taken to another.

3. Though the stat. gives the avoydances to the

the Chancell: and Schoole of *Oxford*, they may well bring a *Qua. Imped.* in the name of their Corporation; and misnaming of the Corporation shall not avoid the act, when it is apparant what Corporation was intended. 2. It was pleaded that the stat. gives, &c. to the Chancellor, Masters, and Scholars, and the Def. demurrs upon it. 3. This being a private act must be taken as it is pleaded.

4. The University must plead. The grantor was a Recusant at the time of the avoidance, not that he continues so, because it was a chattell vested in them, which his conformity after shall not devest.

The Bishop of Sarums case. f. 58.

The Defendant in second deliverance, pleads a grant of the Bishop of S. to G. and himselfe, of the Office of the surveiorship of his mannors, with a Rent-charge of 20 m. confirmed by the Dean and Chapter; and that it is an ancient Office, used to be granted on this manner to such person and persons as the Bishop and his predecessors should please, &c. the Plaintife pleads the stat. 1. *El.* and that the said Office used not to be granted, but for the life of one: For which the grant of the late Bishop is void, *Et hoc paratus est verificare.*

Excepted to the barr the avowant has pleaded that the Bishop, and his predecessors, used to grant the said Office to such person and persons as they pleased, and the Plaintife pleads in barr, that it was not used to be granted but for one life, *Et hoc paratus est verificare*; Where it ought to be *inquiratur*, &c. which is contrary to what was before. *Answ.* It is not, the avowry is in the dis-

dis-junctive, and he confesses part of the dis-junctive.

2. Not averred that the Bishop is dead, and if not, the grant is good for his life.

Answ. Plainly by the words *late Bishop* he is either dead, or removed.

Exception to the avowry. To say it is an ancient office, is too generall, because he makes title to the office it selfe, good, where any thing is claimed by reason of the Office.

Ojcct. The grant is out of the stat. 1 *Eliz.* because no parcell of the possessions of the Bishop, according to the stat. 2. The restraint by stat. is of those things out of which rent may be reserved. 3. Had it been an Office parcell of the Bishoprick, which the Bishop might exercise himselfe, it had not been within the stat. as this is not. 4. If it be restrained for two lives, it is for one, no diversity.

Resp. 1. This grant had been good at the Common Law, by confirmation of the Dean and Chapter. 2. The stat. 32 *Hen.* 8. inables the Bishop to lease for 21. years or three lives, observing the limitations of the stat. without the Dean and Chapter.

3. The stat. 1 *Eliz.* restraines the Bishop to grant any parcell of his possessions, or any thing belonging to the Bishoprick, for more then 21 years or three lives, &c. if he exceed this, good against himselfe; this office may be said belonging to the Bishoprick, he has an inheritance in the gift of it; the purpose of the stat. was to avoid Diminutions and Dilapidations: Therefore the grant of such ancient office of service, and necessity for one life, according to the Custome, is without the stat. more he

cannot

cannot grant, there is no necessity for it; the death of one of them, living the Bishop, is nothing, the grant was made void against the successor, and shall not be made good by chance after.

4. Such grant for one life, not confirmed by the Dean and Chapt', void.

Whisteler's case. f. 62.

Before the stat' of Prerog. c. 15. the Kings grant of a Mannor passed all appendants, without naming; this stat' excepts fees &c. advowsons, and dowers, all other appendants passe now, not named; advowsons passe in the case of restitution, the stat' speaks of grants, and in grants without expresse mention by the words, *As intirely &c.* See the book.

The Church-wardens case of S. Saviours. f. 66.

Qu. *El.* leases a Rectory to the Church-wardens of St. S. for 21. years, and after leases for 50 years, on consideration of payment of 20 l. and surrender of Letters Pat' by the Church-wardens of late *Having* and *Now possessing*, found they payed the 20 l. and delivered the Letters Pat' in Court to be cancelled, paying the fees, but no *vacat* made; the grant is good, it appears not the intent was, that the surrender should be in deed, because it is said, *now possessing*; but in law, by acceptance of the second Letters Pat', and though a Corporation cannot surrender in deed, by law it may.

Resolved. 2. Though actuall surrender is requisite, they have done what concerned them, by the delivery of the Letters Pat', and payment of the

the fees, the cancelling belongs to the Court.

3. The 20 l. recited, payd, need not be found, because executed.

The case of the Marshalsea. f. 68.

Action of the case upon *Assumpsit* brought in the Marshalsea, neither of the parties being of the Hostell, the def. arrests the pl' by *Capias* by command of the Marshall, he brings false imprisonment.

Res. 1. The authority of the Steward and Marshall at the common Law is twofold, 1. Generall, as they are Vice-gerents of the chief Justice in his absence; 2. As Judges of the Marshalsea: this last is limited to debt, and covenant, where both are of the hostell; and to trespasse *vi & armis*, where one is; not if it concerns land: but having the generall authority at will, the other for life, they draw many cases to the Marshalsea, which belongs to the common law.

2. The reason of the speciall authority is this, the suit there is by bill because of priviledge, which cannot be any where else. 2. Suits shall not be elsewhere, because of the necessity of the attendance upon the King by his servants. 3. If strangers might be admitted, one Carman would drive in another: The generall authority vanished by 28. E. 1. which ordains the Kings Bench shall be held in a certain place.

3. The stat' of Articles upon the charters is in explanation of them, not introductory of a new Law, this explains the jurisdiction of the Marshalsea as before.

If any plea be held otherwise, prohibition lies, and the party shall have an action on the case, as consequent upon the stat'.

4. That

4. That part of the stat' which gives jurisdiction in trespasse, must be meant of trespasse by force and armes.

5. Action lyes against the defendants, because the Court has not jurisdiction, so what is done is not by command of a Judge; otherwise, where the Court has jurisdiction, and there be error in the proceedings, as *Capias* is awarded against an Earle; the indicted before Justices of the peace, cannot approve, they cannot assigne a Coroner. 2. Out of their Commission, Court Leet held at a day it ought not, the proceeding is *coram non Judice*, not so of a Court Baron.

Leonard Lovys case. f. 78.

L.L. seised of divers Mannors in soccage, and of one *in capite*, enfeofs to uses precedent in an Indenture, by which he limits to himself for life without impeachment of waste, and to the use of his lessees and devisees, the rem' to his second son in taile &c. the reversion to himself, with power of revocation; he purchases eight acres in soccage, and revokes as to certain mannors in soccage, and devises them with the eight acres to his eldest son, and the heirs of his body for 500 years, and if he alien to remain after his death without issue to his third son, and dyes.

Resol. 1. A. seised of three acres of equall value, one held *in capite*, he gives that to his younger son in tail, and purchases three acres in soccage, he can devise but two parts.

Object. The King was one satisfied for the wardship by the stat', in respect of the acre held, and the reversion of that upon the estate tayl shall not hinder the devise of lands purchased after. 2. The stat' regards not a dry and fruitlesse reversion, but inheritances of annuall value.

Answ.

Answ. To the first, this reversion hinders the devise by words of the stat' he has a reversion of lands held; the stat' sayes, he that aliens two parts, by act executed, or will: if A. alien to one of the three uses, by act executed, he may devise the reversion, the stat' is to be intended of the intire alienation; where the stat' speaks of a reversion, or rem', the devisor must be meant seised of such a rem' as draws wardship.

To the second, things dry and fruitlesse of their own nature, are out of the stat', not such as naturally are annuall, and are not annuall, because of a lease or gift, and nothing reserved; therefore dry reversions are devisable by this stat'; if not, yet will it hinder the devise of other lands; the stat' requires not that land held should be devisable: To make ability to devise within the stat', the time of having, holding, and disposing must concurr. Therefore had the grant to the second son here bin in fee, though with the power of revocation, the devise had bin good, he had no lands *in capite* at the time of the devise. If the father convey his land to the use of his younger son, the eldest within age, after the death of his father shall be in ward, though nothing discends.

The legitimate child, not the reputed, is within the stat': So the son purchases of the father for the reasonable value, this is not for his advancement, nor within the stat'. Tenant in soccage devises, after purchases lands *in capite*, the devise is void for the third part: but if tenant *in capite* and soccage devises the whole, and after alien the land holden, good: To make division of the third part for the King, the lands shall be taken according to the value, at the time of the death of the devisor: the time of provision

on of a third part to distend, need not concurr with the time of alienation, sufficient if he have it at the time of his death; the use of any of the three purposes must continue to the death, the tenure after the death; to make it within the stat', tenant *in capite* devise his soccage, and dyes without issue, it is good, the privity ought to continue too after death, if he that conveyed be attainted, it is out of the stat'.

The uses to his second son are in contingency, not executed by stat' 27. H. 8. because of the power to make leases, and devise, reserved to the feoffor, and the fee is in him in the mean time; so that having power to dispose of it, and being seised, he cannot devise the land purchased after.

Object. The stat' sayes, *Lawfully executed in his life*, here no use was executed in W. till after his death.

Ans. After his death the uses were derived out of the feofment, so are as executed in his life.

2. The rem' to the third son in the devise, void, it is to take effect after alienation. *This point not resolved.*

3. The revocation good, though the Indenture precedes the feofment, and the uses are in contingency, and the revocation but in part.

The devise to the eldest son is for years, his executors, not his heires shall have it.

Doctor Leyfield's case. f. 88.

Trespasse of Corn taken, the def. pleads the Queens grant of the Rectory of O. to A. (and showes not the Letters Patents) who demised for life to P. and justifies as his servant, the pl' demurres, because the plea amounts to a generall issue, Adj. for the pl' in the Bank, the def. brings Error.

Error

Error 1. This plea amounts to a generall, fine for fault of colour.

Anſ. Colour ſhall not be given, 1. he juſtifies as ſervant. 2. Becauſe the Queen is firſt in the conveyance, for if he ſayes the pl' claims by former Letters Pat', he gives him title. These reaſons were not approved: for true it is, if one plead the franktenement of S. and juſtifie as his ſervant, he ſhall not give colour, the pl' may have a leaſe; if title be made, as here, colour muſt be given, and well may it, by former letters patents, where nothing paſſes.

Reſol. But it was reſolved, colour ſhall not be given; it ſhall not be given where the plea goes in barr of the right; it were vain to give colour of right, and barr it after, as where collateral warranty, fine, ſtat', be pleaded, or in claim becauſe of waif: otherwiſe, where he pleads diſcent that barrs but the poſſeſſion; he that claims by title in market overt, ſhall not give colour if he pleads generally: if he pleads that S. was poſſeſſed of them as his goods proper, and ſold them in market overt, or waived them otherwiſe, becauſe he confeſſes no intereſt in the pl'. 2. If the def. claime by the pl', he ſhall not give colour. 3. If the plea be to the writ or action. 4. In caſe of tithes, for whoſe ſoever the land is, they belong to the perſon. Colour muſt be doubtfull for the Lay people, 2. it muſt have continuance, 3. it muſt be ſuch as may maintain the action, if it be of effect, 4. it muſt be by the firſt in the conveyance.

2. Leſſee for years of leſſee for life of the King, muſt ſhew the Letters pat', he that is privie in eſtate or intereſt, or he that juſtifies in right of the party or privie, though he claim but part, muſt ſhow the firſt deed to the Court, that the

the Judges and Jury severally, as it belongs to them, may judge of its sufficiency. A deed shall not be given in evidence by witnesses or copy, if it be not burnt, or some such misfortune be. Copie of record is a good evidence. Release to tenant for life enures to the reversion, yet he cannot plead it without showing: more strongly here, the lessee may contract with the lessor, to suffer him to have the deed to show: A stranger which claims not the thing granted, nor any interest out of it, need not show &c. if he claims either of these, he must; so must grantee of a rent charge, if he pleads a release to his grantor, not the claymer as guardian, tenant in dower, or otherwise by the law, so of tenant by stat', it is not in their power to provide the deed; tenant by curtesie must, it was in his power in the life time of the wife.

3. The not showing the deed is matter of substance; for which judgment shall be given against the pl' in the writ of error, though not shown as cause of the demurrer.

Edward Seymores case. f. 95.

C. Tenant in tail, remainder in tail to I. C. reversion to C. bargains, and sells, and levies a fine to the bargainee, with warranty to him, and his heirs; the bargainee enfeoffes S. he E.S. I. C. dyes, having issue T. C. dyes without issue, E.S. leases to the Plaintif against T.C. *in ejectione firmæ.*

Resol. 1. The bargainee has an estate discendible, during the life of the bargainor, of which his wife shall be indowed. 2. The fine, after the bargain and sale, is no discontinuance of the remainder, it operates upon the estate passed by bargain and sale, and corroborates it, to determine

ine upon the death of the Tenant in tail without issue: It touches not the remainder, otherwise had it preceded the bargain and sale. 3. *Obj.* The feofment of the bargainee has so displaced the remainder, that the warranty which discends upon him shall bar him. *Resp.* The warranty binds him not, it is annexed to the estate determinable by death of the Tenant in Tail without issue; and to the reversion in fee granted by the bargain and sale, and the fine, not to the remainder in tail; and the Conusee cannot by his own act make it extend to more: therefore the estate tail being determined, the warranty is determined too. 2. Warranty barres not any estate, not displaced at the time it is annexed: The father enfeoffes of Land out of which his son has a rent with warranty, it binds not the son as to the rent. 3. The feofment was lawfull, he had fee, and could not discontinue. 4. Warranty cannot inlarge an estate. 5. The remainder in Taile to J.C. was not displaced, no man can discontinue tail, but he that is seised by force of the tail. 6. Collaterall warranty may be given in evidence, if it be not pleaded as an estoppel; though it gives not right, it bars the right of another; the rather in Trespasse and *Ejectione, &c.* because it cannot be pleaded by way of estoppell.

Beaufages case. f. 33.

The Sheriffs, upon *scire fac'* takes bond of the def' to pay money in Court, not void by Stat' 23. H. 6. c. 10. the clause that the sheriff shall not take bond in other manner, refers to the clause of persons of their custody, as the def' is not. 2. Where the stat' makes bonds void taken in other forme, to be intended not forme of words, but

but matter; therefore is a ſingle obligation void, or if it be to any other but himſelf: but if but one ſurety, or to appear in perſon to anſwer, where the ſtat' ſayes to anſwer only, good. Single obligations and aſſumpſits are within the ſtat', other wiſe it would be of ſmall force.

Elfred Denbands caſe. f. 102.

A. at the aſſiſes appears to trie iſſue in treſpaſſe; *Tales de circumſtantibus* is awarded at the requeſt of the pl', the title of which, is, *Nomina* 10. *Talium*, verdict and judgment given againſt the def. who brings error.

Object. The judgment is erronious, the title being *Nomina* 10 *Talium*, the Sheriffe cannot return 11. 2. The ſtat' ſpeaks, thoſe before impannelled, which cannot be ſatisfied with one, as W. 2. c. 11. is not with one Auditor, ſo of the ſtat' of rediſſeiſin. *Reſ.* The *Tales* was well awarded: the ſtat' ſhall be taken beneficially in favour of ſpeedy tryalls; the title is the miſtake of the ſheriff, which ſhall be amended.

The time to grant the *Tales*, is, when ſo many Jurors make default, that the inqueſt cannot be taken. 2. The principall pannell muſt ſtand, therefore not to be granted if they all be drawn, nothing if drawn after the *Tales* granted; one Juror dyes before Verdict, *Tales* ſhall be: He that is meerly def. ſhall not pray a *Tales*, untill default made by the pl'. 3. The number muſt be under the number in the principall Pannell, if not in appeal. 4. It ſhall diminiſh in every new *Tales*. 5. It muſt be of the ſame quality with the former. If the principall pannell was by the half tongue, the *Tales* ſhall be ſo: Juſtices in aſſiſe cannot award *Tales de circumſtantibus* in aſſiſe; the ſtat' ſayes, where tryall is by *Habeas corpora*

capera distringas, or *nisi prius*, and assise cannot be taken by *nisi prius*, but in the proper County.

Humfry Lofields case. f. 106.

D. leases for a year to L. and if the parties please to renue the term, that he shall have it for four years, rendring 40. l. the year, L. bound to performe covenants, failes to pay 10. l. the first quarter, D. brings debt.

Object. Against the action, the reservation is upon contingency, if the term revive. 2. The reservation is during the term aforesaid, *viz.* the latter term. 3. The reservation is to be taken strictly, because spoken by the Lessor. *Res.* The reservation extends to the first year; the proper place of a reservation is after the estates limited, as lease for years, with diverse remainders, reserving rent, goes to all; and though the second term be in contingency, the first is certain. And term aforesaid is collective, and indifferent to both termes, the reservation shall be taken reasonably, according to the intent of the parties. Tenant in tail of an acre in Borough Engl' of another at the Common Law by an Oxe, dyes, having two sons, the service shall not multiply; multiplying is onely betwixt the very Lord and Tenant. (See Sir *W. Fosters* case, R. 8. 46. reservation where the seigniory is by deed, and services reserved within time, &c.)

Arthur Legates case. f. 109.

The King of certain knowledg, &c. grants 15. acres as concealed, which were parcel of a mãnor, the profits of which were answered to the King, and these 15. acres occupied by an intruder, nothing passes.

1. If

1. If the King be answered the profits, &c. and the Firmors suffer one to intrude in part; this cannot be concealment.

2. The grant is void, the *Que quid' &c.* is the suggestion of the party. 2. It is a clause of restraint, and nothing passes not concealed. 3. The King intends not to diminish his revenue, which must be, if the grant be good. 4. Though it be *Concelata & detenta*; and it is true, they are detained, nothing passes because they are not concealed.

3. *Ex mero motu, &c.* ayds not.

If the Kings officers may by matter of record have notice to put land in charge; and doe not, it shall not be said concealed: if land, parcel of the Crown be in charge in the Dutchy, or *è contra*, it is not concealed; and if the clause *Que quid'* be added for more certainty, it viciates not the grant, though false; as a mannor granted, *Qu' quid'* is in the tenure of S. where it is not so; subtraction, or taking the Kings rents, makes concealment; the King may charge the party as Baily, and the Law makes privity.

Robert Pilfords case. f. 115.

Pl' in trespasse counts to the damages of 40 l. at the *Nisi prius* the Jury assesses 49 l. for damages, and 20 s. for costs; before day in Bank, he releases 9 l. parcell of damages; has Judgment of 40 l. and 10 l. for costs; the def. brings error, because the damages and costs surmount the sum in the Count. Judgment is affirmed.

In reall actions before the stat' no damages recoverable, but in personall and mixt actions they were; and by this stat' costs are given in all cases, where damages were before the stat' or by it: damages given since, where none were by

the

the common law, costs shall not be recovered, as in *Quare imped.* where damages by common law or this stat', are increased since, costs shall be had too: In waste against tenant for life, costs shall not be recovered, though the stat' of waste was a stat' of the same Parliam', yet it is an act of Creation: Damages include costs, but in the Count they are taken for damages before the writ brought, which may be recovered, and more for costs after, without any count of them, as in reall actions there is no count to damages. If damages and costs be intirely assessed, and exceed the sum in the Count, not good.

Cheney's case. f. 118.

In valore maritagii issue is joyned upon the tenure, found for the pl', but the Jury does not inquire of the value, Insufficient: It shall not be supplyed by a writ to enquire of the value; In this writ, the value, damages, and costs, are to be recovered, and though issue be joyned upon the tenure, yet if they find for the pl', inquiry of the value must be; as in Assise issue is joyned upon a release, found for the pl', seisin and disseisin must be inquired: so of the four points in a *Quare impedit*, the defect shall not be supplyed with a writ of inquiry, because then the def. could not have his Attaint, where the Court ought to inquire of any thing of which Attaint lyes not, this being but of office, may be supplyed by writ, &c. as in the four points of *Quare imped.*

The case of the Mayor and Burgesses of Lynne.

The King incorporates a Town, by the name

of *Mayor and Burgesses of our Lord the Kings town of Kings Lynne*, one is bound to them, the bond has not, *of our Lord the Kings town*, in the name, the substance is the same, the variance not in materiall words, Burgesses imply a Burrough, and Burrough and Burgesses are conjugates: by *Kings Lynne* it appears it belongs to the King, the rather, there is no other Corporation of the same name.

William Clun's case. f. 127.

Lease for years, *If the lessee live so long*, reserving rent at 4. feasts, or 13 weeks after the feast, &c. after one feast, and within 13 weeks, the lessee dyes, [illegible] debt against the executors, it lyes not: 1. The disjunctive is added for the benefit of the lessee; the first day was for voluntary payment, the legall time was the end of the 13 weeks, before which the lessee dyes, and the rent is discharged; lessee pays rent before the day, it is voluntary, not satisfactory, good to give seisin; payment the morning of the day of payment, is voluntary and satisfactory against the lessor and his heire, not against the King; the last instant of the day, voluntary and satisfactory; after the day, coercive and satisfactory. 2. When the first day is past, it is as if the rent had bin reserved solely on the second, the election is past. 3. The rent is to be paid out of the profits of the land; therefore, in respect of time it shall not be apportioned: If the lessee die betwixt the first and last dayes, his heir, not executors, shall have the rent, it is not then due; or the grantee of the reversion then lease for years, reserving rent at P. or a month after, with condicion of re-entre, tender at P. saves the condicion; otherwise, had the reservation been at

P.

on condic' that the lessor may enter, if it be behind a month after: Rent reserved at two Feasts, or 12. dayes, on condic' of re-entre for not payment 12 dayes after the day of payment, the party shall have 24. dayes after the feasts to save the condicion.

James Osbornes case. f. 130.

Action upon the case, the because pl' bought of the def. diverse things not delivered; amongst which one was, *Fulcrum lecti, Anglice*, a Bedsted, with Valence and Curtains, the pl' recovers, and damages are assessed intirely.

Object. Damages lie not for Valence and Curtains, which were spoken in English, therefore being intirely assessed, not good; not to be intended damages were only given for that, for which the action lies: But in action on the case for words spoken at one time, part actionable, and part not, damages may be intirely assessed; and they shall be intended given for the words actionable onely: 1. Because the pl' must declare how the words were. 2. Because the words not actionable aggravate the damages, otherwise were they spoke at severall times.

Resol. Here damages shall be intended given for that which is actionable, Valence and Curtains are not spoke positively, but expositively: and because they are not signified by the words they expound, they are as if not alledged. In Writs and Pleas, english words are not admitted, if they be not parcell of the name, as L. in the Hall.

1. Words which passe under the name of Latine, are, 1. Good Grammar Latine, 2. Words significant in Law, not in Grammar, 3. Incongruous Latine, which viciates

not Pleas, Grants, or Judiciall Writs: 4. Words insensible, which have no affinity with Latine, and are rejected. Feined latine words, as *Velvetum*, are good.

Read and *Redmans case. f.* 134.

Def. in debt brought by two executors, pleads the death of one of them after summons and severance, the Writs shall not abate. If two purchase an originall reall action, one dyes, hanging the Writ, it shall abate; as in the case of joynt tenants, or parceners, where one dyes without issue, one writ lies for the whole, the moity is not to be recovered; no recovery upon a false reall writ, though the falsenesse be of a latter time. Death of one abates not a judiciall writ, but in case of coparceners, where one dyes having issue. 2. One of the plaintifes after summons and severance takes husband, or does any such act, for which the writ had abated before summons and severance, this abates not the writ. 3. In actions personall, or mixt, though an intire chattell be demanded, the death of one after summons and severance abates not the writ, as in *Quare imped'*. Doubtfull there before summons and severance.

Richard Smiths case. f. 135.

Quare imped' to present to the mediety of the Church, where there are two severall Patrons, advowsons and incumbents in one Church: If two present by turn, the *Quare imped'* shall be to present to the Church. So in the other case may it be, if the Patron will, for to him the Church is intire.

Case

Case of Chester-mill. f. 137.

Commissioners of *Sewers* cannot subvert a Cawsey of a Mill, erected before the time of Ed. 1. by Stat' 25 E. 3. and 1 H. 4. inhancements to be amended by abating the inhancement.

Keighlyes case. f. 139.

Though one be to repair a wall against the flowing of the sea, if it be overthrown by the violence of the water without his fault, by Stat' 23 H. 8. they are to be equally charged who have losse by it; if the wall be in danger unavoidably, and by his fault, an act' of the case lyes for the others, if the danger be not so certain, he shall be charged alone.

2. By the Stat' the Commissioners are not to observe the customes of *Romney Marsh*, but where they are.

3. According to your will and discretion in the Commission, signifies according to Law and Justice.

Case of the Isle of Elye. f. 141.

Commissioners of *Sewers* decree, a new river shall be cut in the Isle of *Elye*, and they tax diverse towns in the County of C. out of the Isle, so much upon every town.

Resol. 1. They cannot make a new River: 1. Because of the Stat' 23 H. 8. 2. The act being perpetuall, it were dangerous to give them power to try new inventions to charge the Country. 3. An ancient trench stopped cannot be opened without the writ, *ad quod damnum*, some little alteration may be made in the course of the water, and a wall decayed may be built, if requisite.

Scroopes case.

Feofment to uſes, with power of revocation by indenture, &c. after by indenture obſerving circumſtances, the feoffor covenants to ſtand ſeiſed to uſes: 1. This enures firſt as revocation, 2. To raiſe new uſes.

Lib. XI.

Lord *De la Wares Caſe. f.* 1.

Sir T. *La W.* created Lord *La W.* 3 H. 8. the Honour diſcends to T. his ſon, W. his ſon is diſabled by Parliament to claim, &c. any dignity, &c. during his life, is called to Parliament by writ of Summons, and ſits as Puny Baron, and dyes, T. his ſon ſues for the place of his great Grandfather in Parliament.

Obj. 1. He ſhall not have the place, he cannot convey his diſcent by his Father who was diſabled: *Anſw.* Not by one that is perpetually diſabled, as by attainder, where the diſability is temporall he may, as the Fathers here was for life.

2. The Father accepted a new creation which the ſon cannot waive, therefore not to have the place he pretends to. *Anſw.* The acceptance of the new dignity by the Father, diſabled at the time too, hurts not the ſon; and when two dignities diſcend, the more ancient is preferred.

An diter

Auditor Curles case.

Queen *Eliz.* grants the Office of one of the Auditors of the Court of Wards to T. and C. and the longer liver of them; King *Jac.* grants it in reversion to A. and B. C. dyes, the King grants the reversion to P. T. dyes.

Res. 1. The grant of the Office of one of the Auditors of the Court of Wards to two, and the survivour of them, good, the stat. 32 *Hen.* 8. c. 46. makes the Auditors one officer, the word *Unius* is not numerative, but denotes unity of office.

2. In such grant the words *Et eorum diutius viventi*, are not void, otherwise by the death of one of them the interest of both were determined; now the survivor remains an Auditor, and another shall be added to him; but before another be added, his voyce in Court is suspended, because by stat. there must be two. So if the King grant by one Patent to one, by another to another, good, till the second is added the first has no voice.

3. Nomination of Auditors must be under the Great Seal.

4. This Office cannot be granted in reversion. 1. It is judiciall, and no man can be a Judge for the time to come; perhaps the grantee might be able at the time of the grant, and insufficient, when it is to take effect. 2. Though it be in part judiciall, in part Ministeriall, yet it is intire, and though ministeriall Offices may be granted in future, this cannot, because it is inseparably judiciall also. For the King cannot grant the judiciall part to one, or two, and the ministeriall to others. 3. If the grant should

be good as to the part ministeriall, yet it can never take effect, because one of the ancient Officers is living, and if they should exercise the ministeriall part with the survivor, there shall be 3. Officers.

5. The grant to P. is voyd. 1. Because in reversion. 2. Because it recites the voyd grant to A. and B. as good.

Sir *John Heydons case. f.* 5.

H. brings trespasse against F. C. T. C. and I. C. F. C. appears and pleads not guilty, so does T. C. which issues were tryed, that betwixt the Plantife, and F. C. first, and the Jury assesses dammages to 200 l. the other Jury against T. C. 50 l. I. C. appears and confesses the action; the writ to inquire of dammages is awarded, and does not issue.

Res. 1. In trespasse against many which plead not guilty, or severall pleas which are found against them in the whole for the Plaintife, Dammages shall not be assessed severally, though one has done more wrong then the others, because the trespasse is intire, and the act of one is the act of all. Otherwise if they be found guilty at severall times; and if the plaintife confesse the trespasse to be done at severall times the writ shall abate.

2. If two trespassers plead severally, both shall be bound by the dammages taxed by the first Jury, and the other shall have attaint though a stranger to the issue, because he is privy to the charge; one of them after apparance makes default, writ to inquire of dammages shall be awarded, to save discontinuance, but it shall not issue, because he shall be bound by the dammages

mages taxed by the Jury, which tryes the other issue; and the other shall not be charged for dammages assessed upon this writ, of which he shall not have attaint; but if the other issue be found against the Plaintife, then it shall issue.

3. Though Discontinuance was against I. C. because in banke where the action was brought, there is no continuance after the writ to inquire of dammages, (otherwise in the Kings Bench) yet it is aided by the stat. 32 H. 8. c. 30.

4. If two Juries give verdict at the same time, the Plaintife may have judgement of the best dammages.

Priddle and Nappers case. f. 8.

Plaintise in Prohibition Counts that the Prior of P. was seised of 22 acres, and of a rectory, time, &c. unto the dissolution; and all that time held them discharged of Tythes, and conveyes the said acres, from the King to himselfe. The Defendant traverses the prescription of discharge; The Jury finds, that the Prior, time, &c. was seised of the said 22 acres, and the advowson of the rectory, which he appropriated by licence of the King, 20 *Hen.* 8. the incumbent living, who dyes, and the Prior held it united, till the dissolution.

Resf. 1. Though every Church Parochiall is supposed presentative, yet may the Plaintife plead that the Prior, &c time out of &c. were rectors of it; It is as much as if he had alledged it to be appropriate or united; but showes not how, because incertain, being time, &c. but the conclusion of the plea is naught; *By reason*

of which he was discharged of Tythes; For Land is not discharged of Tythes by union, but of payment of them; but the mistake of the conclusion hurts not the Count, the cause of Prohibition being good.

2. The Defendant his plea for consultation is not good, because he traverses the conclusion.

3. The issue is not well joyned. 1. The matter of discharge, is by reason of the discharge by stat. and the issue is upon a discharge at the Common Law. 2. In every issue there must be an affirmative, and negative. Here is no affirmative, the conclusion is no affirmation but an inference.

4. The appropriation was sufficient, *Object.* there was an incumbent at the time of the licence of the appropriation; and the licence was in words of the present time, where it could not be but in speciall manner, to take effect after the death of the incumbent, Therefore must the licence be speciall also. *Resp.* The licence shall be construed to take effect in such speciall manner, because otherwise it were voyd.

5. Had the appropriation been voyd, it had not been relieved by stat. 35 *Eliz.* that settles in the King all possessions of Abbies with a qualification, notwithstanding any defect in any surrender, which intitles the King, but this defect is not within the qualification; Had the appropriation been reputative it had been given to the King by stat. 27 and 31 *Hen.* 8.

6. If the Jury finde sufficient matter, to barr the Plaintife of his Prohibition, this is not to be regarded; because no attaint lies; (nor are witnesses to be punished for perjury) it not being materiall to the issue.

7. Per-

7. Perpetuall unity till dissolution is by statute the first sight a discharge of payment of Tythes. If their fermors payd, no such unity. It must be just, equall fee in one, and the other, perpetuall, and free, &c.

Doctor Grants case, f. 15.

The prescription is good, that every Inhabitant in a Parish is to pay 2 s. in the pound, according to the value of their houses yearly, instead of Tythes: because its beginning may be lawfull; it might be so by composition for the Land, before the houses built. 2. The person may sue for it in court *Christian*, because a *Modus decimandi.*

Sir *Henry Nevils case. f.* 17.

A customary mannor may be held of another mannor, there may be Lord, mesne, and Tenant of it; they Tenant may hold Courts, and have fines upon alienation, and descent. If it be forfeited the Lord shall have the services as annexed to his mannor. So Tenant at will upon admission of a Copyholder reserves rent, it goes with the mannor after the will determined.

Doctor Airayes case.

14. of *E.* 3. the King grants licence to found in *Oxford*, an Hall under the name of the Hall of the Scholars of the Queen of *Oxford*, the founder calles it the Hall of the Queen. They present to a Church by the name of Provost, fellowes, and Scholars of the College of the

Queen, in the University of *Oxford*, the incumbent demises the rectory, which they confirme by the name of Provost, fellowes, and Scholars of the Hall, or College of the Queen in the University of *Oxford*; notwithstanding these variances, the presentation, and confirmation are good. The doubt was in that it was Hall of the Queen, For Hall of the Scholars of the Queen, yet allowed, the true name of the College is thus: the word Scholars needs not be used more then once, and if by construction it shall follow Hall, the Provost alone should be the Corporation, by name of Provost of the Hall of Scholars, therefore must it precede, thus the founder named it, and thus has it been ever taken, and a small variance is not to purpose, if the description be such that no other can be intended, as Abbot *Richere* grants by the name of *Richard*.

Henry Harpurs case. f. 23.

In ejectione firmæ, upon a lease at B. of one Chappell and Land in W. in the Parish of B. and of Tythes, &c. without showing the certainty of them, the visne was from B. and upon speciall verdict the case was. B. seised of G. of the value of 30 l. *per annum*, and N. of the value of 18 l. *per annum in Capite*, Covenants to stand seised to the use of himselfe and his wife in Tail, remainder in Tail, &c. the reversion to himselfe; He purchases socage Lands after and devises them.

Resolv. 1. The Kings Tenant in *Cap.* aliens in fee to one of the uses, after purchases Land in socage he may devise the whole.

2. The dry reversion in fee expectant upon the

the Tail, hinders the deviſe for two parts, the King is to have the third of Land in Knight-ſervice by the ſtat.

3. Notwithſtanding this he may deviſe two parts, and the whole, had he granted the reverſion in fee before.

4. Though he had executed his power, for more then two parts to his wife, for her joynture, had not the reverſion in fee reſtrained him, he might have deviſed, his after purchaſe of ſocage Land.

5. Though the conſideration to advance his wife and their iſſues, runs not on to the brothers; yet is an uſe well raiſed to them, the Law implies a conſideration: it is not to purpoſe that they be not found brothers, it appears in the Deed.

6. Where the deviſor limits an eſtate to himſelfe and his heires males, which vaniſhes by his death without iſſue male, he had been free to deviſe, had not the reverſion in fee bound him.

Exceptions, 1. *Ejectione firmæ* is of Tythes, not ſhowing their kinds, naught, no certaine judgement or execution can be made. 2. It may be they conſiſt in *modo decimandi*, So no ejection lyes. 3. The ſtat' 32 *Hen.* 8. gives this action for Tythes as well as Lands, and there certainty muſt be ſhown.

2. A Chappell is demanded, it ought to be demanded by the name of houſe.

3. The *Venire fac'* is ill awarded, it appears there are two B. one a Pariſh, another a Town, and that W. is a Town in the Pariſh of B. the *Venire fac'* muſt be out of B. and W.

Henry

Henry Pigots case. f. 26.

W. brings debt upon an obligation to him, when he was Sheriffe, omitting his name of office, which was after interlined by a ſtranger, the Def. pleads *non eſt factum*, without hearing the Deed.

1. When a Deed is raſed, the obligor may plead not his Deed.

2. If raſed by the obligee in a place immateriall, it is voyd; not if by a ſtranger, and not in a place materiall; here it was in a place immateriall, and it appears not to the Court done by the Plaintiſe, therefore judgement againſt the Def.

When a Deed conſiſts of diverſe parts one depending upon another, ſome againſt Law, it is good in part; if any of them be raſed, void in the whole. 6 Eliz. 310 Kenſee v Bromley & 9 Eliz.

Alexander Poulters case. f. 29.

Felon convict of burning houſes ſhall not have his Clergy; This was felony at the Common Law; heynous amongſt thoſe of higheſt rank, not repleviſable more then in treaſon by ſtat' W. c. 1. 15. yet was Clergy allowed at the Common Law, the impediments of which were, 1. Diſability, which made incapable of Church orders, as blindneſſe. 2. Sex as a Woman. 3. Hereſie. 4. Infidelity, not a *Saracen* or *Jew*, but the excommunicate, and outlaw had it. 5. Confeſſion before ſtat' *Artic. cleri* 15. becauſe no purgation could be made. 6. High treaſon, petty treaſon before 25 *E.* 3. c. 4. Sacrileage, ſetting upon the high wayes. But the ſtat' 23 *Hen.* 8. takes Clergy from the guilty

guilty of burning houses, which is to be meant by verdict or confession. Where hee stands mute, or Challenges beyond his number; or is out-lawed, this stat' reached him not, then followes stat' 25 *Hen.* 8. and that takes it away, where he is mute, or challenges, &c. but this includes onely the principall, the accessory, approver, and the case of out-lawry, were yet untoucht: but these statutes were taken away themselves by stat' 1 *Ed.* 6. and the 25 of *Hen.* 8. only by 5 and 6 *Ed.* 6. revived.

Object. Not wholly, but according to the acts stile, only where he that steals goods in one County flies into another. 2. If revived, it takes not away Clergy, where the offender is found guilty by verdict, but the stat' 23 *Hen.* 8. not revived.

Resp. 1. Resolved, the intire act is revived, though the stat' of *E.* 6. recites those Offences only; and revives the Act touching such offences, it shall be intended of such in mischiefe; So is the stat' W. 2. c. 5. expounded; the stile makes nothing, many statutes are more ample then their stiles. The stat' 27 of Uses, concernes joyntures, yet the preamble is but of Uses and Wills, also otherwise those words, and every clause, &c. shall be surplusage; If it extends not to the intire act, there being but one clause in it which concernes the offences in the stat' 5. and 6 *E.* 6. farther it wills that every Article concerning Clergy, as to such offences shall be in force; and there is but one concerning those offences, and oftentimes penall statutes shall be construed by equity; as stat' 8 *Hen.* 6. c. 12. ordaines, that imbesilling or rasing a Record by which judgement shall be reversed, is to be felony, by equity, making a bad judgement good is felony.

2. The

2. The stat' 25 *Hen.* 8. takes away Clergy, where the party is found guilty by verdict; It takes it away if he stands mute in such forme as if he had been found guilty by the Lawes, &c. 2. The *Parliament* 4. and 5. P. M. takes Clergy from accessories before, which is not imaginable they would have done, had they not admitted it taken from the principall by another Act.

By stat' 18 *El.* c. 7. Clergy is taken away in case of burglary, where the Malefactor is found guilty by Verdict, Confession or Outlary. If he be indited at the Common Law, stand mute or challenge beyond his number, he is not to be refused it; If the Inditement be upon stat' 23 of *Hen.* 8. or 5 *Ed.* 6 of burglary, where the fright of those in the house is joyned with the robbery; or upon stat' 1 *E.* 6, without robbery, no Clergy; stat' 4 and 5. P. M. denies to the accessory before the robbery in a dwelling house; therefore accessory before to robbery shal have it, breaking an house in the day and no robbery, no burglory; if robbery Clergy shall be, if without the fright of the Family; unlesse some of the family (not so of a stranger) were in another part of the house. This before 39 *El.* c. 15. by which Clergy is no more allowed (though no fright happen) where the robbery is above the value of 5 s. to accessories before such robbery if not within 4 and 5. P. M. it is allowed; where Clergy is taken away by stat' the Inditement ought to pursue the stat', else the prosecuor is left to the Common Law.

Upon 1 *E.* 6. upon 5, 6 *E.* 6.

Metcalfes.

Metcalfes case. f. 38.

Ref. 1. The Defendant in account, after judgement to account, and before judgement finall brings Error, it lyes not. 1. That Writ sayes if judgement be given, which must be understood of the principall judgement; as the feast of Saint M. of the principall feast, and the Wife shall be received upon the default of her Husband, after judgement of admeasurement and before the principall judgement. 2. It shall be understood of the intire judgement; Therefore in action against two, one pleads to the issue, the other confesses it, judgement against him; hee shall not sue Error, till the plea determine against the other. Otherwise right should faile, for the Kings Bench cannot proceede upon the Record: nor the Common Pleas, because it is removed. 3. The first judgement is not *ad grave damnum*, as the stat' speakes, he loses nothing by it: judgement of the arrears, &c. is given in the last judgement. 4. It is but an award of the Court, not properly a Judgement, as the outing of ayd. 5. They have day by the Rolle till the last judgement: but if a fellon dyes after exigent awarded, Error lyes before attainder necessarily, for else his Goods should be forfeited by award of the exigent without remedy, if diverse are sued by severall precipes, and judgement given against one, hee shall not stay for his Error till judgement bee given against the rest: if the Error be in the Originall onely, the tenor of it shall bee certified, otherwise no proceeding could bee against the others.

2. If in the case, the Justices of the common Bench certifie the record, it is not removed; they have not authority to certifie before judgment.

Richard Godfrey's case. f. 42.

The chief pledges refuse according to the custome of the Mannor, to present to the Leet, that each of them had payed 10 s. *pro certo Letæ*; the steward imposes a fine of 6 l. upon them, the Lord distreins for the fine, and *pro certo Letæ*, they bring a Replevin.

Res. 1. The fine is not well assessed, it is to be severall as the offence is; and had the offence been joint, the fine shall be severall, as in disseisin and trespasse: otherwise, where the persons are incertain, and numbers infinite, as a Town is fined for escape of a felon: Reasonablenesse, or excesse of fines, shall be tryed by the Judges.

2. Erronious fine is avoidable by plea, no other remedy.

The Lord cannot distrein *pro certo Letæ*, without prescription, because against common right; otherwise of fine or amercement.

4. Admitting he may distrain for the certainty of the Leet, he shall have return, though no cause to distrain for the fine; for where the action, which is for two things, lyes not for one, it shall not abate, if no better action was to be had, else it abates in the whole.

Richard Liford's case. f. 46.

Trespas, the def. pleads that I. was seised in fee, and demised to S. and P. excepting the trees, not dotards, for their lives; and covenanted to stand seised of the tenements before demised

cum

cum pertinentiis, to the use of his son R. In tail, &c. and the def. as servant of R. entred, and held the trees: Adj. against the pl^a.

Resolv. 1. By exception of the trees they become not chattels, but continue an inheritance descendible to the heire; the law favours not severance of trees from the land: bargain and sale of land, the trees upon it passe not without inrolmẽt.

2. Without such exception the generall intereſt of them is in the lessor, (the lessees intereſt is but particular) he may sell them without the lessees leave, the sale to be effectuall after the term determined. No tithes of them, because parcell of the inheritance.

2. The exception of the trees excepts not the soil, onely so much as nourishes the trees: If by consent of the lessee the lessor plucks up the trees, the soil is the lessees: exception of a wood excepts the soil; if an acre, or advowson, be severed from the Mannor by exception, (as in the barr case) neither can become parcell of it again; not so of trees, which grow upon the land, and were not severed in fact.

3. Things in possession cannot be parcell of a reversion upon an estate for life, trees growing, &c. Fish and Deer may passe with it.

4. In this case, by grant of the reversion generally, the trees passe with the inheritance of the whole land which passes, as annexed; the disseisee by his entry gains the crop, as well as the grasse, by relation of the continuance of possession, which relation is not of effect to give trespas against any man but the first disseisor; but the crop shall be recouped in damages.

5. By exception of the trees here, power is reserved to the lessor, or his servants, to enter, and show the trees to the vendee,

6. The

6. The plea in barr is insufficient: 1. He shows there is another jointenant for life, not named in the writ, and demands judgment of the action. 2. The plea is double, one to the writ, another to the action. 3. He pleads the entry of lessee for life, which is surplusage. 4. Dotards were not excepted, and he shows not that these were not dotards; but because it appears, the pl' has no title, judgment against him.

Case of the Taylers of Ipswich.

Taylers of I. make an Ordinance, that no man shall exercise the trade in I. if not such as has been apprentice seven years, and approved by them, on forfeiture of 5 m. for breach of which they bring debt, the def. pleads he was retained by A. as his domestick servant, and that he made garments by his command.

Resp. 1. At the common Law, no man could be prohibited to exercise any trade, though no Apprentice, and ignorant, action of the case lay for misdoing.

2. The ordinance for more then is prohibited by stat' 5. *El.* is against common law, after seven years apprentishp he may exercise his trade, without the allowance of any man.

3. Stat' 5. *El.* forbids not private exercise of a trade in a family, therefore the case is out of their Ordinance.

4. Stat' 19. *H.* 7. strengthens not any Ordinance against the law, if allowed; the allowance discharges the penalty of 40 l. for making Ordinances against the Kings prerogative, and the Common-wealth.

Edward

Edward Savill's case. f. 55.

Ejectt' firmæ lyes not of a close, it must be of a certain number of acres, showing the nature of them: writs shall not abate for want of order of the house before the land.

Bentham's case. f. 56.

Damages or costs omitted, or not well assessed by the Jury, if the pl' release them, he may have judgment, which shall not be reversed.

Doctor Fosters case. f. 56.

Information preferred against a recusant by the informer before conviction, as well for our L. the King as himself.

Object. 1. The def. is not within the 23 of *Eliz.* that Statute speaks of him that is lawfully convicted; and information upon a penall law must pursue the Stat' strictly.

2. The informer cannot sue by stat' 23 of *Eliz.* it gives the forfeiture of 20l. the moneth to the King expresly; the division of the forfeiture in three parts, is of the 100. m. for hearing Masse, which is not given to the King.

3. If judgement shall be given against the def. it cannot be according to the stat' against a Recusant convict, as the words are; conviction must be by verdict or confession, not upon Demurrer.

4. Admitting the informer might sue by this Statute, it is enacted by 28 *Eliz.* that the forfeiture shall be paid at the receit of the Exchequer, which takes away the popular action.

5. Statute 35 *Eliz.* gives it to the King in more large words, *viz.* by action in any Court in

Court of record at *West*; and where interest is given to one by ſtat', all others are excluded, the ſtat' too is generall, that the King ſhall have all and ſingular forfeitures, therefore no other ſhall ſhare with him.

6. If he ſhall be charged at the ſuite of the party by ſtat' 23 *Eliz.* he may be charged again by ſtat' 28. and 35. more ſtrongly, becauſe by ſtat' 3 *Jac.* no traverſe is to be, but to the point of recuſancy, or comming to Church; ſo cannot he plead heretofore convict, or that another information is depending.

1. Anſwered and reſolved, he may be convict to ſatisfie the ſtat' in the ſame ſuit, and conviction ſhall be taken for attainder, for nothing ſhall be forfeited till judgment.

2. The branch of diſtribution runs to all the forfeitures; ſhall forfeit, and forfeit to the King is the ſame. So are the ſtat' 3 H. 6. 3. and 3 H. 7. 7. taken.

3. He againſt whom judgement is given upon demurrer, default, or otherwiſe, is convict within the ſtat', for he is attainted, which implyes it, he is found ſo by the Judges. So by ſtat' 8 H. 6. treble damages are given where diſſeiſin is found with force; this extends to judgment by *nihil dicit*, or default.

4. Stat' 28 *Eliz.* takes not away ſtat' 23. as being made for the ſpeedy execution of it. 2. It alters the Kings ſuit, not the parties, and leaves the informer as before. 3. The 28. gives not the penalty to any new perſon, it was given before to the King by 23. 4. The ſtat' 28. extends only to indictments, and touches not informations. 5. The def. is not within the ſtat' 28. if not convicted at the Kings ſuit, that therefore remains as it was. 6. The ſtat' is in the affirmative

native, and they may ſtand together. But ſtat' 28. alters 23. in this, that it confines ſuites againſt recuſants to the Kings Bench, or Aſſiſes; and ſtat' 35. *Eliz.* and 3. *Jac.* inlarges the juſisdiction as to ſuits of the King, not of the party.

5. Stat' 35. *Eliz.* deſtroyes not the action popular given by ſtat' 23. it was ordained for a more ſpeedy remedy, not to abrogate that; the woman covert was within 1, and 23, of *Eliz.* but before 35. *Eliz.* had ſhe been indicted of recuſancy, the forfeiture could not have been levyed of the husbands goods, becauſe not party to it, otherwiſe in information or debt. And where ſtat' 35. ſayes the Queen ſhall recover all the paines in ſuch ſort, &c. it is as it were ſaid, All that ſhe ſhall recover, ſhe ſhall recover in this manner, as where the ſtatute gives Formdon againſt the Pernor of the profits, and that he ſhall vouch as Tenant, is to be meant where voucher lyes by the Tenant, the ſtat' too 35. *Eliz.* is affirmative; and though it inflicts the penalty of 20l. monthly, it takes not away the forfeiture ſtat' 1 *Eliz.* of 12 d. every Sunday and Holyday; and where it is ſaid by this ſtat', that conviction ſhall be in the Kings Bench or Aſſiſes, yet the Juſtices of Peace, and others authoriſed by ſtat' 23. may take indictments; ſtat' 3. *Jac.* inflicts impriſonment upon the wife; yet the forfeiture before continues, where a new perſon is deſigned by a new ſtat', this evacuates the old, unleſſe they may ſtand together: Words excluſive of other Courts, exclude not the Kings Bench, becauſe *Coram Rege.*

Magdalen Colledge case. f. 66.

K. Maſter of M. Colledge, and the Fellowes,

17. *Eliz.*

17. *Eliz.* grant to the Queen, reserving rent, on condicion to grant over, which is done accordingly; 18. *Eliz.* a generall stat' of confirmations is made, Fine and Proclamations, and five years passes, K. dyes, the successor accepts the rent, enters and leases to the def.

Res. 1. The Master and Fellows are restrained by stat' 13 *El.* to grant to the Queen, the Qu. is a (Person) within the letter of the stat', and if she shall be exempt, it must be by construction of the Law, which cannot be, 1. because a generall stat' for maintenance of religion, good literature, and relief of the poor, binds the King unnamed; gifts to such uses, as well they ought, are preserved against the generality of stat'. It appears by 1. *El.* that the Qu. is incloſed within the word, *Person or persons*, because there exempt. 2. Because the designe of the stat' is to suppresse wrong, therefore the stat' *de donis* binds her. 3. As that stat' &c. statutes which maintain the will of donors bind her. 4. Masters and Fellowes are disabled to grant, the Qu. then cannot purchase. 5. The intent is observable, which was to convey by the Queen to a subject, and make her an instrument of wrong, as tenant of a Bishop grants to the King, to regrant to a Corporation, so to extinguish the seigniory of the Bishop, and by the same deceit evade the stat' of Mortmain; the Patent shall be repealed *Jure Regio*, so here.

The act extends to Corporations not incorporated by such names as are in the stat'.

2. The stat' 18. *Eliz.* Confirms not this grant, it is out of the words, *Consideration granted*, the reservation of rent could not be one, the Queen was to regrant before the rent due.

2. Grants to the King may be void, or voidable, in

in respect of the grantor, as an infant grants to him. 2. In respect of the thing granted, as a sounder ship. 3. Of the estate, as tail. 4. Where the grant agrees not with the rules of the Law. 5. Where is omission of circumstances, as inrolment: The stat' confirms not grants of the first or second sort, of the third it does, the Tenant was able to grant, the fourth is not aided, the fift is.

At the time of the grant it needed not confirmation, K. was living.

3. The fine and non-claim barrs them not: 1. Though the conveyance was not by them, it was suffered by them, and within the words of the stat'. 2. No claim could be by K. or any in his time, but claim was made within five years after his death.

4. Acceptance of rent prejudices not, being a body aggregate of many, and the acceptance of the Master alone barrs not the rest, much lesse being without deed.

Lewis Bowle's case. f. 79.

B. covenants to stand seised to the use of himself and his wife for life, the rem' to their 1, 2, and 3. son successively, rem' to the heirs of their two bodies, rem' over, they have issue I. B. dyes, I. dyes, the rem' assignes by fine to the pl', the wind blows down a barn, the wife carryes the timber out of the Mannor, the pl' brings an action of Trover, &c. against the servant of the wives executors.

Res. 1. Till issue be born, B. and his wife have an estate tayl executed, after the estate is divided, to them for life, the remaind' to the issue in tayl.

2. Tenant in tail after possibility, has a grea-

ter eſtate as to the quality, then tenant for life: 1. She is not to be puniſhed for waſt. 2. Not to be compelled to atturn. 3. She ſhall not have aid. 4. Upon her alienation no *conſimili caſu* lyes not, 5. Nor intruſion after her death. 6. She may joyn the miſe upon the mere right. 7. She ſhall not be called tenant for life; the quantity of her eſtate is the ſame, therefore is her feofment a forfeiture, receit ſhall be upon her default, her exchange with tenant for life, is good.

3. The wife is not tenant in tayl after poſſibility, &c. that eſtate muſt be the rem' of an eſtate tayl, by the act of God, not the limitation of the party; and though ſhe be tenant in tail after poſſibility of the remainder, this drowns not the eſtate for life, as not being a greater eſtate.

4. She ſhall have the priviledge of tenant in tail after poſſibility, becauſe of the inheritance in her; and becauſe ſhe is tenant in tail after poſſibility of the remainder, though ſhe cannot claim it in poſſeſſion.

5. If tenant for life, or years, cuts trees, or proſtrates houſes, the leſſor ſhall have the trees and timber, they belong not to the leſſee, but as annexed to the land, the wrongfull ſeverance increaſes not the intereſt; a ſpeciall intereſt the leſſee has in timber blown down, *viz.* to rebuild with it again.

6. The law very much priviledges manſion houſes.

7. Leſſee without impeachment of waſte, ſhall have the trees he cuts, without impeachment of waſte, is as much as without any demand for waſte done; otherwiſe, of without impeachment, &c. by writ of waſte.

8. The

8. The privilege of without impeachment of waſt is knit to the eſtate, by confirmation, which changes the eſtate, to a greater, accepted, it is extinguiſhed.

9. The leſſee without impeachment ſhall have Trees thrown down by the wind.

Case of Monopolies 84.

The Queen grants to one of the Privy Chamber, the only making, and importation of cards, voyd. 1. The grant of making, voyd; all Trades which imploy youth, &c. are for the publick good, and therefore cannot be made proper to one. 2. A monopoly has. 3. Incidents miſchievous to the Commonwealth. 1. Raiſing the price. 2. The commodity ſhall not be ſo good. 3. The impoveriſhing poor Artificers.

3. The Qu is deceived in her grant, ſuppoſing that to be for the weal publick, which is not.

4. It forbids thoſe that are skilfull, and licences a Groom of the Privy Chamber to make Cards. Card-play not *malum in ſe*, no Trade can be prohibited, but by *Parliament*.

5. The licence of importance, &c. voyd, being without reſtraint, the King may diſpence with the 3 of *E.* 4. c. 5. which forbids it, but it muſt be with reſtraint.

The Earl of Devons caſe. f. 99.

The King reciting that unſervicable munition belongs to the Maſter of the Ordnance, grants it to him, who ſells, &c. and dyes; his Executors are chargable to the King.

Reſ. 1. The munition cannot be claymed as fees of the office, it was erected 35 *H.* 8.

2. The suggestion on which the grant is founded is false, so voyd.

3. Though the testator claimed to his own use, he is accountable, to the King, the Law makes privity, so of any man who takes the Kings goods. The King need not charge as receiver but generally; otherwise the King should lose them by death of the party, though the goods never came to the testators hands, if he were a cause of the Kings losse he shall be charged.

Sir *W. Mildmays case.*

Res. No officer of the King can dispose any part of the treasury for the Kings honour or profit, without a warrant under the great, or Privy Seal.

James Bagges case. f. 93.

The cause of disfranchising a Citizen must be some act against his Oath, and duty: words spoke against the chiefe Magistrates, (of the place) or an attempt without more no Cause. 2. Disfranchising must be by Charter, or prescription, unlesse conviction be by course of Law. 3. If the disfranchised, has his Writ of restitution, and sufficient cause (which is false) be returned. Action of the Case lies. 4. Such returne must be certaine.

FINIS.

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The moſt materiall faults are here obſerved; the Reader may correct the leſſe conſiderable with his pen.

PAge 21. line 2. for *it* read *he.* & l. 21. r. *in him* p. 28. l. 28. dele *and* p. 43. l. 21. dele *and* p. 34 l. 11. dele *Object.* p. 36. l. 30. r *diſſent.* p. 41. l. 9. for *it* r. *which* ibid. l. 9. r. *the Indenture refers not to any Fine levyed upon new.* l. 34. for *and* r. *in* & l. 35. r. *becauſe the eſtate of the land* p. 48. l. 34. after *debts,* adde, *untill B. came of full age.* p. 56. l. 17, 18. dele *for which the demand is made.* & l. 19. dele *no acceptance confirmes* p. 60. l. 15. after *H. 7.* adde *it.* & l. 18. for *who* r *and* p. 63. l. 21. for 30. r. 50. p. 88. l. 16. for *and the debt forfeited,* r. (according to the book at large) *debts upon contracts are forfeitable.* p. 90. l. 18. r *ſo be there.* p. 100. l. 25. dele *or* p. 104. l. 16 r. *probate or* p. 109. l. 13. r. *entre* & l. 21. r. *the concord* p. 137. l. 11. r. *pleadable* p. 352. l. 15. r. *be not* p. 269. l. 19. r. *Fort to the pl'* p. 175. l. 9, 10. r. *might permit ſtrangers to preſent* p. 184. l. 19 for *is* r. *if* p. 185 l. 6. *in law,* r. *by deed* p. 192. l. 4 dele *three* ibid. l. 24 r. *hurt her* p. 211. l. 24. dele *other,* and p. 228. l. 7. *not* p. 240. l. 3. r. *To T. remainders to* p. 252. l. 17. dele *not* p. 264 l. 20. r. *makes not* p. 267. l. 26. for *and* r. *but.*

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